EXHIBIT NN

08:58AM

1   IN THE UNITED STATES DISTRICT COURT

2   FOR THE NORTHERN DISTRICT OF CALIFORNIA

3   SAN JOSE DIVISION

4

5

   CISCO SYSTEMS, INC.,   )   CV-14-5344-BLF
6   )
                    PLAINTIFF,   )   SAN JOSE, CALIFORNIA
7   )
              VS.   )   NOVEMBER 21, 2016
8   )
   ARISTA NETWORKS, INC.,   )   VOLUME 2
9   )
                    DEFENDANT   )   PAGES 25-260
10   )

11   TRANSCRIPT OF PROCEEDINGS
              BEFORE THE HONORABLE BETH LABSON FREEMAN
12   UNITED STATES DISTRICT JUDGE

13   A P P E A R A N C E S:

14   FOR THE PLAINTIFF: DAVID A. NELSON
                             QUINN EMANUEL URQUHART & SULLIVAN, LLP
15   500 WEST MADISON STREET, SUITE 2450
                             CHICAGO, IL 60661

16

17   FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                             BY: SEAN PAK
18   50 CALIFORNIA STREET, 22ND FLOOR
                             SAN FRANCISCO, CALIFORNIA 94111

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                             BY: DAVE NELSON
20   500 WEST MADISON STREET, SUITE 2450
                             CHICAGO, ILLINOIS 60661

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22   APPEARANCES CONTINUED ON NEXT PAGE

23   OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
                                   CERTIFICATE NUMBER 13185

24

25   PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
              TRANSCRIPT PRODUCED WITH COMPUTER

03:31PM 1   THE COURT: THAT'S WHAT I UNDERSTOOD WITH MUCH OF THE

03:31PM 2   EVIDENCE OF, THIS IS THE HIERARCHY, THIS IS PART OF OUR

03:31PM 3   PROCESS, BUT OFFERED NOW AS PART OF A FOURTH BUILDING BLOCK,

03:31PM 4   NOT A FOURTH AND FIFTH SEPARATE BUILDING BLOCK.

03:31PM 5   MR. NELSON: YEAH, EXACTLY.

03:31PM 6   I DON'T THINK -- THE ONLY CLARIFICATION I WOULD MAKE THERE,

03:31PM 7   I DON'T THINK IT'S A FILTERING IN THE SENSE OF THAT, BECAUSE

03:31PM 8   FILTERING TO ME IS HERE'S SOMETHING THAT EVIDENCE THAT YOU

03:31PM 9   CAN'T PRESENT.

03:31PM 10   THE COURT: I'M NOT FILTERING. YOU MODIFIED HOW YOU

03:31PM 11 ARE PRESENTING IT SO THAT I DON'T NEED TO FILTER IT BY

03:31PM 12 ADDRESSING THE DEFENSE CONCERNS.

03:31PM 13   MR. NELSON: EXACTLY.

03:32PM 14   THE COURT: OKAY. AND I THINK IT ALL COMES OUT THE

03:32PM 15 SAME FOR MR. VAN NEST BECAUSE NOW THERE WILL BE FOUR BUILDING

03:32PM 16 BLOCKS, EVIDENCE OF THE ROLE OF HIERARCHIES IN CREATING COMMAND

03:32PM 17 LINES, BUT THEY WON'T BE ASKED WHETHER THERE WAS COPYING OF A

03:32PM 18 HIERARCHY, PER SE.

03:32PM 19   MR. VAN NEST: RIGHT.

03:32PM 20   AND WE WON'T BE -- THERE WILL BE NO VERDICT QUESTION ON IT,

03:32PM 21 THERE WILL BE NO -- YEAH.

03:32PM 22   MR. NELSON: WE WEREN'T --

03:32PM 23   MR. VAN NEST: IT'S NOT AN ELEMENT IN THEIR

03:32PM 24 COPYRIGHTED WORK AT THIS POINT.

03:32PM 25   MR. NELSON: WE WEREN'T PROPOSING VERDICT ELEMENTS ON

08:21AM

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CISCO SYSTEMS, INC.,   )   CV-14-5344-BLF

6   )

                   PLAINTIFF,   )   SAN JOSE, CALIFORNIA

7   )

              VS.   )   NOVEMBER 28, 2016

8   )

ARISTA NETWORKS, INC.,   )   VOLUME 3

9   )

                   DEFENDANT   )   PAGES 261-533

10   )

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            BEFORE THE HONORABLE BETH LABSON FREEMAN
12   UNITED STATES DISTRICT JUDGE

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                            QUINN EMANUEL URQUHART & SULLIVAN, LLP
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25   PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
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DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:39PM 1   FROM THOSE NETWORKS ACROSS THROUGH OUR ROUTERS.

04:39PM 2   AND SO WE STARTED ADDING THESE OTHER NETWORK PROTOCOLS IN

04:39PM 3   ADDITION TO IP, IN ADDITION TO THE INTERNET PROTOCOL INTO OUR

04:40PM 4   SYSTEM. AND THESE OTHER PROTOCOLS HAD CONCEPTS LIKE ADDRESSES

04:40PM 5   AND MTU AND ROUTING TABLES AND THE LIKE.

04:40PM 6   AND SO WE HAD TO HAVE SOME WAY OF DISTINGUISHING BETWEEN

04:40PM 7   WHAT SORT OF ADDRESS ARE YOU TALKING ABOUT. AND THE DECISION

04:40PM 8   THAT WE WENT WITH WAS TO PREFIX A LOT OF THESE COMMANDS WITH

04:40PM 9   THE PROTOCOL THAT THEY BELONGED TO.

04:40PM 10   SO THERE'S IP ADDRESS HERE, AND YOU HAVE A DEC NET ADDRESS.

04:40PM 11   XNS ADDRESS. WE BASICALLY, BY THE MIDDLE OF THE '90S, HAD

04:40PM 12   ENDED UP WITH 14 DIFFERENT NETWORK PROTOCOLS IN THE BOX. WE

04:40PM 13   HAD GONE FROM BEING JUST AN IP ROUTER TO BECOMING A MULTI

04:40PM 14   PROTOCOL ROUTER.

04:40PM 15   Q.   AND, AGAIN, AT THAT TIME, WHEN YOU WERE WORKING ON THE

04:40PM 16   FIRST IP ROUTER, WAS THERE ANY KIND OF CONSTRAINT ON YOU OR

04:40PM 17   FUNCTIONAL DEMAND THAT TOLD YOU, HEY, YOU'VE GOT TO DO IT THIS

04:40PM 18   WAY?

04:40PM 19   A.   THERE WEREN'T ANY OTHER DEVICES LIKE THIS AT THE TIME.

04:41PM 20   THERE WERE NOT ANY EXPECTATIONS THAT THE CUSTOMERS HAD, THAT

04:41PM 21   THERE WAS A WAY OF DOING THIS OR THERE WAS A WAY OF TALKING

04:41PM 22   ABOUT IT OR EVEN THE CHOICE OF WORDS.

04:41PM 23   WE COULD CERTAINLY, YOU KNOW, WE COULD CERTAINLY HAVE

04:41PM 24   CHOSEN DIFFERENT WORDS TO DO THIS. WE COULD HAVE CHOSEN

04:41PM 25   DIFFERENT ORDERS OF THESE WORDS TO DO THIS.

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:44PM 1   AND AS WE HIRED ENGINEERS, I BASICALLY TAUGHT THEM THIS,

04:44PM 2   THIS IS HOW YOU THINK ABOUT IT, THIS IS HOW YOU DO IT. AND

04:44PM 3   THEY WOULD DEVELOP THEIR OWN COMMANDS. WE MIGHT TALK ABOUT

04:44PM 4   THOSE COMMANDS. BUT EVENTUALLY -- ESSENTIALLY THEY HAD A GREAT

04:44PM 5   DEAL OF FREEDOM AS TO WHAT THEY WERE GOING TO CHOOSE. AND

04:44PM 6   THAT'S BEEN BASICALLY THE PROCESS EVER SINCE.

04:44PM 7   Q.   OKAY. AND I'M SURE -- ARE THERE COMMANDS HERE THAT YOU

04:45PM 8   LOOK BACK AND YOU COULD SAY, I PROBABLY WOULD HAVE COME UP WITH

04:45PM 9   A DIFFERENT COMMAND KNOWING THAT I KNOW NOW?

04:45PM 10 A.   UM, YES. NO, THERE'S -- YOU CAN ALWAYS -- ONCE YOU

04:45PM 11 UNDERSTAND THE PROBLEM MORE CLEARLY FROM A DIFFERENT

04:45PM 12 PERSPECTIVE, YOU CAN USUALLY COME UP WITH DIFFERENT WAYS OF

04:45PM 13 DOING THINGS.

04:45PM 14 Q.   OF THESE COMMANDS HERE, I DON'T HAVE THE TIME TO GO THROUGH

04:45PM 15 ALL OF THEM, BUT COULD YOU JUST HIGHLIGHT FOR THE JURY SOME OF

04:45PM 16 THE COMMANDS THAT YOU PERSONALLY AUTHORED THAT ARE WIDELY

04:45PM 17 UTILIZED EVEN TODAY BY CISCO ENGINEERS?

04:45PM 18 A.   SO THERE IS -- WELL, IP ADDRESS THAT WE'VE TALKED ABOUT,

04:45PM 19 WHICH ASSIGNS AN IP ADDRESS TO AN INTERFACE.

04:45PM 20   IP ACCESS LIST SETS UP A BUNCH OF RULES AS TO WHAT PACKETS

04:45PM 21 CAN GO OUT TO PARTICULAR INTERFACES. YOU CAN BUILD A REAL

04:45PM 22 SIMPLE THING CALLED A FIREWALL TO MAKE SURE THE WRONG PACKETS

04:45PM 23 DON'T GET IN OUR OUT OF A NETWORK.

04:45PM 24   AND SHOW INTERFACE IS ONE THAT'S USED EVERY DAY BY NETWORK

04:46PM 25 MANAGERS TO SEE WHAT'S GOING ON IN THE NETWORK.

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:52PM 1   WE CREATED AN IP HIERARCHY IN THE SHOW COMMANDS.

04:52PM 2   Q.   NOW, IS THERE ANY REASON WHY YOU COULDN'T HAVE DECIDED TO

04:53PM 3   PUT IP AS ONE OF THE ENTRIES THERE?

04:53PM 4   A.   THAT WOULD HAVE BEEN PERFECTLY REASONABLE. THAT WOULD BE

04:53PM 5   ONE WAY OF DOING THINGS.

04:53PM 6   Q.   AND YOU JUST MADE A DIFFERENT HIERARCHY CHOICE?

04:53PM 7   A.   I MADE THIS PARTICULAR HIERARCHICAL CHOICE. THERE WAS

04:53PM 8   NOTHING SACRED ABOUT THIS PARTICULAR ORDERING OF COMMANDS OR

04:53PM 9   PARTICULAR ORGANIZING PRINCIPAL. I COULD HAVE ORGANIZED THINGS

04:53PM 10   ENTIRELY BY TECHNOLOGY AREA OR --

04:53PM 11   Q.   WHAT DO YOU MEAN BY TECHNOLOGY AREA?

04:53PM 12   A.   SO I COULD HAVE HAD A TOP LEVEL SHOW COMMAND -- EXCUSE ME.

04:53PM 13   I COULD HAVE HAD A TOP LEVEL COMMAND CALLED IP, FOR INSTANCE.

04:53PM 14   AND I COULD HAVE BASICALLY SAID THERE'S IP AND THEN THERE

04:53PM 15   WOULD BE A COMMAND THAT MIGHT INVOKE SORT OF A CONFIGURATION

04:53PM 16   ACTION OR I COULD HAVE IP AND A BUNCH OF -- A FEW MORE WORDS,

04:54PM 17   THEN I COULD HAVE AT THE END DISPLAY OR SOMETHING LIKE THAT. I

04:54PM 18   COULD HAVE DONE STUFF LIKE THAT AS WELL. THERE'S NO INHERENT

04:54PM 19   REASON WHY THAT COULDN'T HAVE BEEN DONE.

04:54PM 20   MR. SILBERT: YOUR HONOR, OBJECTION TO TESTIMONY

04:54PM 21   ABOUT WHAT COULD HAVE BEEN DONE.

04:54PM 22   THE COURT: OVERRULED.

04:54PM 23   BY MR. PAK:

04:54PM 24   Q.   AND, MR. LOUGHEED, JUST TO MAKE IT ABSOLUTELY CLEAR ON THE

04:54PM 25   RECORD, DID YOU COPY ANY OF YOUR MULTIWORD COMMANDS OR THE

08:15AM

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CISCO SYSTEMS, INC.,   )   CV-14-5344-BLF
6   )
                      PLAINTIFF,   )   SAN JOSE, CALIFORNIA
7   )
              VS.   )   NOVEMBER 29, 2016
8   )
ARISTA NETWORKS, INC.,   )   VOLUME 4
9   )
                      DEFENDANT   )   PAGES 534-819
10   )

11   TRANSCRIPT OF PROCEEDINGS
          BEFORE THE HONORABLE BETH LABSON FREEMAN
12   UNITED STATES DISTRICT JUDGE

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14   FOR THE PLAINTIFF: DAVID A. NELSON
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23   OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
                                   CERTIFICATE NUMBER 13185
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25   PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
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REDIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

11:11AM   1   THROUGH AND LOOK AT ALL THE COMMANDS THAT ARE HERE, AND ARE

11:11AM   2   THESE SINGLE WORD COMMANDS OR MULTIWORD COMMANDS THAT ARE

11:11AM   3   DESCRIBED HERE?

11:11AM   4   A.   THESE APPEAR TO BE, FOR THE MOST PART, SINGLE WORD

11:12AM   5   COMMANDS.

11:12AM   6   Q.   OKAY. AND DO YOU KNOW, AND JUST TO EXPLAIN TO THE JURY,

11:12AM   7   WHAT IS THE DIFFERENCE BETWEEN A COMMAND NAME AND A COMMAND

11:12AM   8   ARGUMENT?

11:12AM   9   A.   THE COMMAND NAME IS SORT OF THE BEGINNING SET OF WORDS,

11:12AM 10   WORDS THAT USE THE COMMAND, THAT BASICALLY DEFINE THE COMMAND.

11:12AM 11   AND THEN THERE ARE OTHER THINGS THAT ARE ARGUMENTS OR

11:12AM 12   PARAMETERS THAT THE USER WILL TYPE. THERE MAY OCCASIONALLY BE

11:12AM 13   OTHER WORDS THAT THE SYSTEM WILL SUPPLY, BUT THERE'S GENERALLY

11:12AM 14   OTHER WORDS THAT ARE TYPED IN BY THE USER.

11:12AM 15   Q.   AND MR. FISHER, IF WE COULD BRING UP THE STANFORD

11:12AM 16   DEMONSTRATION THAT WE DID IN MR. LOUGHEED'S DIRECT EXAMINATION.

11:12AM 17   DO YOU RECALL DESCRIBING TO THE JURY THE USER INTERFACE

11:13AM 18   THAT EXISTED AT STANFORD?

11:13AM 19   A.   YES, I DO.

11:13AM 20   Q.   WE DO SEE MULTIPLE WORDS HERE, INTERFACE, ETHERNET 0,

11:13AM 21   ADDRESS AND SO ON, DO YOU SEE THAT?

11:13AM 22   A.   YES.

11:13AM 23   Q.   I BELIEVE YOUR TESTIMONY WAS THAT THIS WAS A SINGLE WORD

11:13AM 24   COMMAND, DO YOU RECALL THAT?

11:13AM 25   A.   YES. IT'S WHAT WE CALL THE INTERFACE COMMAND.

REDIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

11:31AM 1   ONE OF THE TWO COAUTHORS OF THAT WHOLE PROTOCOL; IS THAT

11:31AM 2   CORRECT?

11:31AM 3   A.   YES.

11:31AM 4   Q.   AND I WANT TO NOW, MR. FISHER, GO TO THE SLIDE THAT TALKS

11:31AM 5   ABOUT MODES AND PROMPTS.

11:32AM 6   YES. WE WILL START HERE. SO DO YOU RECALL THAT MR.

11:32AM 7   SILBERT ASKED YOU ABOUT THE MODES AND PROMPTS, AND HE FOCUSED

11:32AM 8   YOUR ATTENTION ON THE USER AND PRIVILEGE EXEC MODES, DO YOU

11:32AM 9   RECALL THOSE QUESTIONS?

11:32AM 10 A.   YES.

11:32AM 11 Q.   BUT YOU UNDERSTAND, SIR, THAT CISCO IS NOT CLAIMING THE

11:32AM 12 PROTECTION OVER INDIVIDUAL MODES?

11:32AM 13 A.   CORRECT.

11:32AM 14 Q.   AND YOU UNDERSTAND THAT CISCO IS CLAIMING PROTECTION OVER

11:32AM 15 THE COMBINATION OF ALL FOUR MODES AND THE ASSOCIATED PROMPTS IN

11:32AM 16 THIS CASE; DO YOU UNDERSTAND THAT?

11:32AM 17 A.   YES, THAT'S MY UNDERSTANDING.

11:32AM 18 Q.   AND LET'S LOOK AT THOSE ALL FOUR MODES, PARTICULARLY GLOBAL

11:32AM 19 CONFIGURATION MODE AND THE INTERFACE MODE.

11:32AM 20   CAN YOU REMIND THE JURY AGAIN WHAT THOSE MODES WERE?

11:32AM 21 A.   THE GLOBAL CONFIGURATION MODE WAS SOMETHING THAT I CREATED

11:32AM 22 WHEN I NEEDED TO BE ABLE TO LOAD CONFIGURATION COMMANDS INTO

11:32AM 23 THE SYSTEM INTERACTIVELY.

11:32AM 24   PREVIOUSLY THERE HAD BEEN, WE WOULD PUT THEM IN A FILE, WE

11:32AM 25 WOULD DOWNLOAD THEM OVER THE NETWORK, AND THAT WORKED JUST

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

11:48AM 1   A.   I HAVE -- I HAVE BEEN ON THE PARSER-POLICE MAILING LIST

11:48AM 2   PROVIDING FEEDBACK. I HAVE DEVELOPED A COMMAND MYSELF AND GOT

11:48AM 3   FEEDBACK FROM THE PARSER-POLICE, AND I DEVELOPED A DOCUMENT

11:48AM 4   CALLED THE PARSER-POLICE MANIFESTER.

11:48AM 5   Q.   ALL RIGHT. SO LET'S TALK ABOUT THE PARSER-POLICE

11:48AM 6   MANIFESTER.

11:48AM 7   CAN YOU TELL ME WHAT THE PARSER-POLICE MANIFESTER IS?

11:48AM 8   A.   THE PARSER-POLICE MANIFESTER IS A DOCUMENT THAT I AUTHORED

11:48AM 9   WHICH PROVIDES A SET OF GUIDELINES TO ENGINEERS ABOUT THE

11:48AM 10   CONTENTS OR THE WAY THEY SHOULD DEVELOP THE USER INTERFACE, THE

11:48AM 11   COMMAND-LINE INTERFACE TO CISCO PRODUCTS.

11:48AM 12   Q.   AND WHEN DID YOU AUTHOR THAT DOCUMENT?

11:48AM 13   A.   SOME TIME IN THE LATE 1990'S.

11:48AM 14   Q.   DO YOU KNOW WHETHER THAT'S A DOCUMENT THAT'S BEEN

11:48AM 15   MAINTAINED AT CISCO?

11:48AM 16   A.   IT HAS. IT GETS PERIODICALLY REVISED AND THERE IS A

11:49AM 17   CURRENT VERSION IN OUR DOCUMENT CONTROL SYSTEM THAT YOU CAN

11:49AM 18   PULL UP.

11:49AM 19   Q.   HOW ABOUT -- IS IT SOMETHING THAT'S EVER REFERRED TO?

11:49AM 20   A.   A LOT OF INTERNAL PROCESSES REFER TO USING THE

11:49AM 21   PARSER-POLICE AND -- THE PARSER-POLICE MANIFESTER IS KEY TO

11:49AM 22   UNDERSTANDING HOW TO BEST USE THE PARSER-POLICE DISCUSSION

11:49AM 23   GROUP.

11:49AM 24   Q.   SO I WANT TO TURN TO THAT IN A MINUTE. THE TERM POLICE,

11:49AM 25   THAT KIND OF TO ME, THAT'S AUTHORITY, RIGHT?

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

11:49AM 1   A.   YOU WOULD THINK SO. BUT IT'S ACTUALLY NOT AN AUTHORITY.

11:49AM 2   IT IS A DISCUSSION GROUP. IT'S MORE OF AN ADVICE GROUP.

11:49AM 3   Q.   AND WHAT DO YOU MEAN BY THAT? GIVE ME AN EXAMPLE?

11:49AM 4   A.   SO THE -- AN ENGINEER COMING UP WITH A NEW COMMAND WILL

11:49AM 5   PROPOSE THE SYNTAX TO THE PARSER-POLICE FOR FEEDBACK. AND

11:49AM 6   THERE ARE A GROUP OF VOLUNTEERS WHO STAFF THIS LIST WHO PROVIDE

11:50AM 7   FEEDBACK BASED ON WHAT THEY BELIEVE ARE BEST PRACTICES.

11:50AM 8   AND THE DISCUSSIONS, AS YOU CAN IMAGINE, WE'VE GOT

11:50AM 9   EMPOWERED, OPINIONATED AND SMART ENGINEERS, THEY MAY NOT REACH

11:50AM 10   A CONCLUSION THAT EVERYBODY AGREES WITH. BUT THE POINT IS IT'S

11:50AM 11   A SET OF FEEDBACK.

11:50AM 12   AND AT THE END OF THE DAY, THE ENGINEER WRITING THE COMMAND

11:50AM 13   HAS THE SAY OF HOW IT GOES INTO THE CODE, HOW THE COMMAND GETS

11:50AM 14   WRITTEN.

11:50AM 15   Q.   SO LET ME TURN TO -- OR HAVE YOU TURN TO, I GAVE YOU THE

11:50AM 16   BINDER, WE SHOULD USE IT. EXHIBIT 851 SHOULD BE BEHIND A TAB

11:50AM 17   THERE.

11:50AM 18   A.   I HAVE IT.

11:50AM 19   Q.   DO YOU SEE THAT?

11:50AM 20   A.   I DO.

11:50AM 21   Q.   DO YOU RECOGNIZE THIS DOCUMENT?

11:50AM 22   A.   I DO.

11:50AM 23   Q.   AND CAN YOU TELL US WHAT IT IS?

11:50AM 24   A.   THIS IS ONE OF THE EARLY VERSIONS OF THE PARSER-POLICE

11:51AM 25   MANIFESTER.

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

11:51AM   1   Q.   IS THIS A DOCUMENT THAT YOU AUTHOR?

11:51AM   2   A.   THIS IS A DOCUMENT THAT I AUTHORED.

11:51AM   3   MR. NELSON: SO YOUR HONOR, AT THIS POINT I MOVE FOR

11:51AM   4   ADMISSION OF EXHIBIT 851 INTO EVIDENCE.

11:51AM   5   THE COURT: ANY OBJECTION?

11:51AM   6   MR. FERRALL: NO OBJECTION.

11:51AM   7   THE COURT: ALL RIGHT. IT WILL BE ADMITTED.

11:51AM   8   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 851, HAVING BEEN

11:51AM   9   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

11:51AM   10   EVIDENCE.)

11:51AM   11   MR. NELSON: ALL RIGHT. SO LET'S GO -- WELL, WE

11:51AM   12   MIGHT AS WELL START AT THE BEGINNING.

11:51AM   13   Q.   THERE'S A SECTION THERE CALLED PURPOSE, DO YOU SEE THAT?

11:51AM   14   A.   YES.

11:51AM   15   Q.   CAN YOU TELL US WHAT THIS IS?

11:51AM   16   A.   THIS IS TO INTRODUCE PEOPLE WHO HAVE NOT ENCOUNTERED THE

11:51AM   17   PARSER-POLICE DISCUSSION GROUP BEFORE TO UNDERSTAND WHAT THE

11:51AM   18   PURPOSE OF THE MAILING LIST IS.

11:51AM   19   Q.   SO I WANT TO HIGHLIGHT A LITTLE BIT HERE WHERE IT SAYS, TO

11:51AM   20   ENSURE CONSISTENCY, USABILITY AND FRIENDLINESS OF THE

11:51AM   21   CONFIGURATION INTERFACE TO CISCO IOS; DO YOU SEE THAT?

11:51AM   22   A.   YES.

11:51AM   23   Q.   SO WHAT DID YOU MEAN BY THAT, WHAT WERE YOU TRYING TO

11:52AM   24   CONVEY?

11:52AM   25   A.   NO, THERE'S A CERTAIN AESTHETIC TO THE DESIGN OF THE USER

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

11:52AM 1 INTERFACE, IT'S ARRANGED IN A HIERARCHY, THE WORDS SEND TO

11:52AM 2 APPEAR IN A SEQUENCE, AND THERE'S A SENSE OF HOW IT SHOULD BE,

11:52AM 3 AND WE -- WHEN IT WORKS WELL, WE SAY IT'S CONSISTENT, MEANING

11:52AM 4 THAT IT BEHAVES THE WAY YOU EXPECT AS YOU GO THROUGH IT.

11:52AM 5   IT'S USEABLE MEANING YOU CAN UNDERSTAND WHAT THE COMMANDS

11:52AM 6 MEAN, AND IT'S FRIENDLY, MEANING IT'S EASY TO USE AND NOT

11:52AM 7 CRAZY.

11:52AM 8 Q.   WHY DID YOU THINK THAT WAS IMPORTANT TO CONVEY TO THE

11:52AM 9 ENGINEERS THAT MIGHT BE COMING UP WITH COMMANDS?

11:52AM 10 A.   IF YOU'RE GENERATING A COMMAND, EVEN FOR THE FIRST TIME,

11:52AM 11 YOU MAY NOT HAVE ANY CONTEXT FOR THE COMMAND. SO IT'S

11:52AM 12 IMPORTANT TO UNDERSTAND THAT THERE ARE ELEMENTS OF COMMAND

11:52AM 13 DEVELOPMENT THAT ARE IMPORTANT, INCLUDING BACKWARDS

11:52AM 14 COMPATIBILITY WITH WHAT EXISTS, THINKING ABOUT FUTURE

11:52AM 15 EXTENSIBILITY, CONSIDERING THE ENGINEER'S OWN PREFERENCES AND

11:53AM 16 THINKING ABOUT WHAT THE CUSTOMER MIGHT HAVE. SO THESE ARE ALL

11:53AM 17 COMPETING CONCERNS.

11:53AM 18   SO YOU WANT TO LET THEM KNOW THAT THESE THINGS ARE

11:53AM 19 CONTAINED, I THINK, IN CONSISTENCY, USABILITY AND FRIENDLINESS.

11:53AM 20 Q.   AND ONE OF THE TERMS YOU USE THAT I HEARD A FEW TIMES IS

11:53AM 21 EXTENSIBILITY.

11:53AM 22 A.   YES.

11:53AM 23 Q.   CAN YOU TELL ME WHAT YOU MEAN BY THAT?

11:53AM 24 A.   WHEN FEATURES GET ADDED TO THE PRODUCT ALL THE TIME AND

11:53AM 25 THEY -- WHEN YOU ARE CREATING A COMMAND FOR THE FIRST TIME,

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

11:59AM 1   LAST SECTION OF THE DOCUMENT. ITS HEADING IS SYNTAX DESIGN

11:59AM 2   GUIDELINES, DO YOU SEE THAT?

11:59AM 3   A.   YES.

11:59AM 4   Q.   SO IF I GO TO THE FIRST -- YEAH, EXACTLY, THAT FIRST

12:00PM 5   PARAGRAPH, IT SAYS, THINK EXTENSIBLE. IF YOU ADD A COMMAND,

12:00PM 6   TRY TO ENVISION IF MORE SIMILAR COMMANDS THAT MAY BE ADDED, AND

12:00PM 7   STRUCTURE THE PARSE TREE NOT TO HAVE DEAD ENDS.

12:00PM 8   DO YOU SEE THAT?

12:00PM 9   A.   I DO.

12:00PM 10   Q.   CAN YOU EXPLAIN TO US WHAT THAT'S REFERRING TO?

12:00PM 11   A.   SO AS I MENTIONED EARLIER, COMMANDS ARE A SEQUENCE OF WORDS

12:00PM 12   ARRANGED IN A HIERARCHY.

12:00PM 13   AND THE IDEA IS THAT WHEN YOU CREATE A COMMAND WORD, YOU

12:00PM 14   SHOULD THINK ABOUT IF THAT COMMAND MIGHT EVER BE EXTENDED TO

12:00PM 15   INCLUDE ANOTHER WORD.

12:00PM 16   I HAVE AN EXAMPLE HERE, THERE'S A TECHNOLOGY CALLED DNS-IX,

12:00PM 17   AND WHEN IT WAS FIRST INTRODUCED THERE WAS ONLY THE DMDP

12:00PM 18   CAPABILITY.

12:00PM 19   SO THE ENGINEER, NOT THINKING EXTENSIBLY, MADE A SINGLE

12:01PM 20   CONCEPT. DNS-IX-DMDP.

12:01PM 21   NOW THE PROBLEM IS WHEN WE WANTED TO ADD A NEW DNS-IX

12:01PM 22   FEATURE LATER, WE WERE STUCK, WE MADE A DEAD END. IT WASN'T

12:01PM 23   EXTENSIBLE, BECAUSE A SINGLE WORD ACCIDENTALLY CONTAINED TWO

12:01PM 24   CONCEPTS. JUST AN OVERSIGHT.

12:01PM 25   SO WE SAID THE BETTER PRACTICE WOULD BE TO MAKE DNS-IX ITS

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

12:01PM   1   OWN NODE SO THAT YOU CAN EXTEND THE HIERARCHY AND ADD DMDP

12:01PM   2   LATER, ADD ANY OTHER FEATURE AFTER IT SO THAT ALL THE DNS-IX

12:01PM   3   COMMANDS WOULD BE NATURALLY GROUPED TOGETHER

12:01PM   4   Q.   AND WHEN YOU ARE TALKING ABOUT THAT, YOU ARE TALKING ABOUT

12:01PM   5   THE SEQUENCE OF THE WORDING OF THE COMMANDS?

12:01PM   6   A.   THE SEQUENCE OF THE WORDS IN THE COMMAND IN THE

12:01PM   7   COMMAND-LINE INTERFACE.

12:01PM   8   Q.   OKAY.

12:01PM   9   THE COURT: IS THAT THE END OF THE DOCUMENT?

12:02PM   10   MR. NELSON: YEAH, I'M AT THE END OF THE DOCUMENT,

12:02PM   11   YOUR HONOR.

12:02PM   12   THE COURT: ALL RIGHT. IT'S TIME FOR OUR LUNCH

12:02PM   13   BREAK. LET'S TAKE OUR ONE-HOUR LUNCH AND WE WILL COME BACK AT

12:02PM   14   1:05.

12:02PM   15   MR. NELSON: THANK YOU, YOUR HONOR.

12:02PM   16   (WHEREUPON A RECESS WAS TAKEN.)

01:06PM   17   THE COURT: ALL OF OUR JURORS ARE HERE AND, MR. NELSON, WE

01:06PM   18   ARE GOING TO CALL MR. REMAKER BACK TO THE STAND; IS THAT

01:06PM   19   CORRECT?

01:06PM   20   MR. NELSON: YES, YOUR HONOR. LET ME FIND HIM.

01:06PM   21   THE COURT: THAT WOULD BE A GOOD THING.

01:06PM   22   MR. NELSON: I FOUND HIM.

01:07PM   23   THE COURT: GOOD AFTERNOON. ALL RIGHT. MR. NELSON,

01:07PM   24   GO AHEAD, PLEASE.

01:07PM   25   MR. NELSON: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION OF MR. REMAKER BY MR. FERRALL

01:50PM   1   A.   YES.

01:50PM   2   Q.   OKAY. AND I TAKE IT YOU CAN'T SPEAK TO WHAT WAS GOING

01:50PM   3   THROUGH THE MINDS OF THE PEOPLE, WHOEVER THEY WERE, WHO CREATED

01:50PM   4   THE OTHER 400 AND SOME COMMANDS, RIGHT?

01:50PM   5   A.   THAT'S CORRECT.

01:50PM   6   Q.   FOR EXAMPLE, YOU DON'T KNOW ONE WAY OR THE OTHER, WHETHER

01:50PM   7   THE AUTHORS OF ANY OF THOSE OTHER COMMANDS COPIED FROM SOME

01:50PM   8   OTHER PLACE, ANY OF THE WORDS THEY USED IN THOSE COMMANDS?

01:50PM   9   A.   I WOULD HAVE NO WAY TO KNOW THAT PERSONALLY.

01:50PM   10   Q.   AND I THINK WE SAW IN YOUR DIRECT TESTIMONY THAT CISCO

01:50PM   11   ENGINEERS ARE FREE TO USE INDUSTRY STANDARD PUBLICATIONS WHEN

01:50PM   12   THEY COME UP WITH COMMANDS, RIGHT?

01:50PM   13   A.   THAT'S CORRECT.

01:50PM   14   Q.   AND THAT WOULD INCLUDE, FOR EXAMPLE, IEEE STANDARD

01:51PM   15   PUBLICATIONS, RIGHT?

01:51PM   16   A.   CORRECT.

01:51PM   17   Q.   AND IETF PUBLICATIONS, CORRECT?

01:51PM   18   A.   YES.

01:51PM   19   Q.   NOW ON THE SUBJECT OF COMMANDS, I THINK YOU'VE USED THE

01:51PM   20   TERM NERD KNOB TO REFER TO A COMMAND, HAVEN'T YOU?

01:51PM   21   A.   I HAVE USED THAT TERM.

01:51PM   22   Q.   AND THAT'S BECAUSE A CLI COMMAND IS SORT OF LIKE A KNOB TO

01:51PM   23   CONTROL THE FUNCTION OF THE DEVICE, IS THAT FAIR?

01:51PM   24   A.   A NERD KNOB IS A SPECIFIC CLASS OF COMMAND, BUT OKAY.

01:51PM   25   Q.   OKAY. LET'S TALK A LITTLE BIT ABOUT YOUR SHOW INVENTORY

DIRECT EXAMINATION OF MR. SLATTERY BY MR. PAK

03:03PM 1 COMPATIBLE, YOU WERE TALKING ABOUT BEING BACKWARD COMPATIBLE

03:03PM 2 WITH CISCO PRODUCTS; IS THAT CORRECT?

03:03PM 3 A.   CORRECT.   JUST THEIR COMMAND LANGUAGE.   SO THE SYNTAX HAD

03:03PM 4 TO BE EXACTLY THE SAME, CHANGE NO COMMANDS.

03:03PM 5 Q.   DID THEY TELL YOU ANYTHING ABOUT WHAT YOU COULD DO WITH THE

03:03PM 6 CODE THAT IMPLEMENTED THE PARSER?

03:03PM 7 A.   NO, THERE WAS NO DIRECTION, JUST MAKE IT SO THAT IT'S

03:03PM 8 PORTABLE SO WE CAN MOVE IT.

03:04PM 9 Q.   AND DID YOU FOLLOW THAT GUIDANCE FROM CISCO, DID YOU CHANGE

03:04PM 10 ANY OF THE COMMANDS?

03:04PM 11 A.   WE DID NOT CHANGE ANY OF THE COMMANDS, NO.   WE FOLLOWED IT.

03:04PM 12 Q.   DID YOU END UP ADDING ANY FUNCTIONALITY TO THE USER

03:04PM 13 INTERFACE?

03:04PM 14 A.   YES, WE DID.

03:04PM 15   IN THE COURSE OF GOING THROUGH AND WRITING THE STUFF,

03:04PM 16 MYSELF AND THE OTHER MEMBERS OF MY TEAM THAT WERE BETWEEN 2 AND

03:04PM 17 4 OF US AT DIFFERENT POINTS IN TIME WORKING ON THIS, OVER THE

03:04PM 18 COURSE OF 18 MONTHS.

03:04PM 19   WE SPENT -- WE HAD SPENT TIME WORKING ON OTHER OPERATING

03:04PM 20 SYSTEMS THAT PROVIDED SOME LITTLE LEVEL OF HELP, SO YOU COULD

03:04PM 21 ASK THE SYSTEM, CAN YOU DESCRIBE A COMMAND TO ME.   AND LET ME

03:04PM 22 KNOW WHAT ALL THE WORDS ARE THAT I NEEDED TO TYPE IN FOR A

03:04PM 23 SPECIFIC COMMAND.

03:04PM 24   AND THAT WAS NOT AVAILABLE IN THE CISCO PARSER AT THE TIME

03:04PM 25 WE STARTED THE PROJECT.

DIRECT EXAMINATION OF MR. DUDA BY MR. PAK

04:11PM 1   THAT WERE COPIED FROM CISCO INTO ARISTA'S PRODUCTS; YOU

04:11PM 2   UNDERSTAND THAT, CORRECT?

04:11PM 3   A.   SORRY, I DON'T QUITE KNOW WHAT YOU MEAN.

04:12PM 4   Q.   YOU UNDERSTAND THAT ARISTA COPIED SOME OF THE COMMANDS AT

04:12PM 5   ISSUE IN THIS CASE FROM CISCO; YOU UNDERSTAND THAT, CORRECT?

04:12PM 6   A.   OUR COMMAND INTERPRETER RECOGNIZES MANY OF THE SAME

04:12PM 7   COMMANDS, THAT'S RIGHT.

04:12PM 8   Q.   ARE YOU DENYING, SIR, THAT ARISTA COPIED CISCO'S CLI

04:12PM 9   COMMANDS FROM CISCO SOURCES; ARE YOU DENYING THAT?

04:12PM 10   A.   COPIED FROM?

04:12PM 11   Q.   CISCO SOURCES?

04:12PM 12   A.   NO, I'M NOT.

04:12PM 13   Q.   YOU ARE NOT DENYING THAT, RIGHT?

04:12PM 14   A.   NO.

04:12PM 15   Q.   SO CISCO COPIED CLI COMMANDS AND SOME OUTPUTS FROM CISCO

04:12PM 16   SOURCES INTO ARISTA PRODUCTS, CORRECT?

04:12PM 17   A.   WE DIDN'T COPY CISCO OUTPUTS INTO OUR CODE, NO, I DON'T

04:12PM 18   THINK THAT'S ACCURATE.

04:12PM 19   Q.   LET ME FOCUS ON THE COMMANDS, WE WILL GET TO THE OUTPUTS

04:12PM 20   LATER.

04:12PM 21   ISN'T IT TRUE, SIR, THAT ARISTA COPIED SOME OF CISCO'S CLI

04:12PM 22   COMMANDS FROM CISCO SOURCES AND PUT IT INTO ARISTA'S PRODUCTS?

04:12PM 23   A.   YES, THAT'S RIGHT.

04:12PM 24   Q.   THAT'S RIGHT.

04:12PM 25   BUT NO ONE ELSE AT ARISTA HAS BEEN REPRIMANDED OR ASKED TO

DIRECT EXAMINATION OF MR. DUDA BY MR. PAK

04:40PM 1 CONFIGUREABLE.

04:41PM 2 Q.   WELL, YOU COULD REPLACE THEM WITH YOUR COMMANDS. YOU COULD

04:41PM 3 REPLACE THEM THE CISCO COMMAND WITH ARISTA'S OWN COMMANDS AND

04:41PM 4 YOUR PRODUCTS WOULD WORK JUST FINE; ISN'T THAT TRUE?

04:41PM 5 A.   IT'S A LITTLE HYPOTHETICAL. I THINK WE WOULD HAVE TO COME

04:41PM 6 UP WITH AN ALTERNATIVE COMMAND LANGUAGE, BUT IT'S CERTAINLY

04:41PM 7 TECHNICALLY ACHIEVABLE.

04:41PM 8 Q.   YOU CAN CERTAINLY REMOVE COMMANDS FROM YOUR PRODUCTS THAT

04:41PM 9 OVERLAP WITH CISCO'S CLI USER INTERFACE COMMANDS AS A TECHNICAL

04:41PM 10 MATTER; ISN'T THAT TRUE, SIR?

04:41PM 11 A.   YES, YOU COULD REMOVE COMMANDS.

04:41PM 12 Q.   AND IN FACT, YOU ACTUALLY HAVE AN INTERFACE CALLED

04:41PM 13 LINUX-INTERFACE THAT DOES NOT USE THE CISCO CLI COMMANDS; ISN'T

04:41PM 14 THAT TRUE?

04:41PM 15 A.   THAT'S RIGHT.

04:41PM 16 Q.   THAT'S CORRECT, RIGHT?

04:41PM 17 A.   YES.

04:41PM 18 Q.   AND YOU'VE SAID THAT YOU DON'T HAVE TO USE THE CLI IF YOU

04:41PM 19 DON'T WANT TO, THE NATIVE LINUX INTERFACES ARE ALL THERE AND

04:41PM 20 ABOUT 20 PERCENT OF OUR CUSTOMERS ADOPT A PURE LINUX APPROACH,

04:42PM 21 YOU'VE SAID THOSE THINGS, CORRECT?

04:42PM 22 A.   I DID.

04:42PM 23 Q.   YOU'VE HEARD A LOT ABOUT OPEN OR INDUSTRY STANDARD.

04:42PM 24   YOU'VE NEVER ASKED CISCO WHETHER CLI WAS AN OPEN STANDARD

04:42PM 25 THAT ANYONE CAN USE WITHOUT PERMISSION? YOU'VE NEVER ASKED

820

08:21AM

1

2   IN THE UNITED STATES DISTRICT COURT

3   FOR THE NORTHERN DISTRICT OF CALIFORNIA

4   SAN JOSE DIVISION

5

6

    CISCO SYSTEMS, INC.,   )   CV-14-5344-BLF
7   )
                      PLAINTIFF,   )   SAN JOSE, CALIFORNIA
8   )
              VS.   )   NOVEMBER 30, 2016
9   )
    ARISTA NETWORKS, INC.,   )   VOLUME 5
10   )
                      DEFENDANT   )   PAGES 820-1114
11   )

12   TRANSCRIPT OF PROCEEDINGS
                  BEFORE THE HONORABLE BETH LABSON FREEMAN
13   UNITED STATES DISTRICT JUDGE

14   A P P E A R A N C E S:

15   FOR THE PLAINTIFF: DAVID A. NELSON
                              QUINN EMANUEL URQUHART & SULLIVAN, LLP
16   500 WEST MADISON STREET, SUITE 2450
                              CHICAGO, IL 60661
17

18   FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                              BY: SEAN PAK
19   50 CALIFORNIA STREET, 22ND FLOOR
                              SAN FRANCISCO, CALIFORNIA 94111
20

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22   APPEARANCES CONTINUED ON NEXT PAGE

23   OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
                                    CERTIFICATE NUMBER 13185
24

25   PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
                   TRANSCRIPT PRODUCED WITH COMPUTER

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:31AM 1   Q.   WE LOOKED AT, OR MR. NELSON SHOWED YOU A NUMBER OF LINES IN

11:31AM 2   THIS, WERE THERE ANY FEATURES THAT YOU TALKED ABOUT WITH

11:31AM 3   MR. NELSON, ONES THAT YOU WOULD HAVE CONSIDERED PROPRIETARY TO

11:31AM 4   CISCO?

11:31AM 5   A.   NO.

11:31AM 6   Q.   WERE ANY OF THE LINES THAT MR. NELSON ASKED YOU ABOUT, WERE

11:32AM 7   THOSE ACTUAL CLI COMMANDS IN THOSE LINES?

11:32AM 8   A.   THEY WERE GENERALLY REFERRING TO THE FEATURE OF THE

11:32AM 9   FUNCTIONALITY.

11:32AM 10   Q.   AND JUST TO BE CLEAR, CAN YOU EXPLAIN THE DIFFERENCE

11:32AM 11   BETWEEN THE CLI COMMAND AND THE FEATURE?

11:32AM 12   A.   DEPENDING ON THE FEATURE, SOMETIMES IT CAN BE USED

11:32AM 13   SYNONYMOUSLY BECAUSE NETWORK ENGINEERS REFER TO THE CLI WHEN

11:32AM 14   THEY WANT TO TALK ABOUT THE FEATURE.

11:32AM 15   FOR EXAMPLE, THERE'S A ROUTING PROTOCOL CALLED BGP, AND IF

11:32AM 16   YOU WANT TO CHANGE THE ADVERTISEMENT INTERVAL, YOU SAY, BGP

11:32AM 17   INTERVAL AS SORT OF THE FEATURE, BUT THAT MAY ALSO BE THE

11:32AM 18   COMMAND.

11:32AM 19   Q.   FOR THE FEATURES THAT YOU WALKED THROUGH WITH MR. NELSON,

11:32AM 20   DID ARISTA IMPLEMENT THOSE, TO YOUR KNOWLEDGE?

11:33AM 21   A.   WE IMPLEMENTED, I WOULD SAY, MANY OF THESE, BUT I DON'T

11:33AM 22   RECALL SPECIFICALLY EACH ONE THAT WAS DONE OR NOT. AND IN

11:33AM 23   CERTAIN CASES LIKE ZTP, WHICH WAS DISCUSSED, IF THERE COULD

11:33AM 24   HAVE BEEN A BETTER WAY, WE WOULD HAVE INVENTED THAT AS WELL.

11:33AM 25   Q.   AND WHY DON'T WE TALK ABOUT THAT. I THINK THAT WAS

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:23PM 1   Q.   NEXUS 7000. HOW MANY COMMANDS ARE IN NX-OS IN TOTAL?

04:24PM 2   A.   I DO NOT KNOW THAT NUMBER.

04:24PM 3   Q.   YOU DIDN'T COUNT THAT?

04:24PM 4   A.   NO.

04:24PM 5   Q.   OKAY. DO YOU KNOW HOW MANY COMMANDS ARE IN IOS?

04:24PM 6   A.   AS I SAID THE NUMBER OF COMMANDS IN IOS CHANGE EVERY DAY.

04:24PM 7   AND WE TALKED ABOUT 14, 15,000 COMMANDS.

04:24PM 8   Q.   YEAH, IT WAS 16,000 AT LEAST SEVERAL YEARS AGO, RIGHT?

04:24PM 9   A.   PROBABLY.

04:24PM 10   Q.   AND IT PROBABLY IS GOING UP, RIGHT?

04:24PM 11   A.   EXACTLY.

04:24PM 12   Q.   OKAY. AND SO YOU SAID THERE WERE 1500 COMMANDS ON THE

04:24PM 13   NEXUS 7000, BY YOUR COUNT?

04:24PM 14   A.   YES.

04:24PM 15   Q.   AND IS IT FAIR TO SAY THAT EACH COMMAND RELATES TO A

04:24PM 16   FUNCTION?

04:24PM 17   A.   EACH COMMAND RELATES TO ONE OF THE FUNCTIONS IN THE SWITCH.

04:24PM 18   Q.   OKAY. SO AN OPERATING SYSTEM THAT HAD SIGNIFICANTLY MORE

04:24PM 19   THAN 1500 COMMANDS RUNNING ON THE SWITCH, THAT'S GOING TO BE A

04:24PM 20   SWITCH WITH MORE FUNCTIONS, RIGHT?

04:24PM 21   A.   THAT'S TRUE.

04:24PM 22   Q.   AND SO WOULD IT SURPRISE YOU TO KNOW THAT ARISTA'S SWITCH

04:25PM 23   ACTUALLY HAS WELL OVER 5,000 COMMANDS?

04:25PM 24   A.   I DON'T KNOW.

04:25PM 25   Q.   YOU DON'T KNOW ARISTA'S SWITCH?

12:20:04

1   IN THE UNITED STATES DISTRICT COURT

2   FOR THE NORTHERN DISTRICT OF CALIFORNIA

3   SAN JOSE DIVISION

4

5

         CISCO SYSTEMS, INC.,   )   CV-14-5344-BLF
6   )
                        PLAINTIFF,   )   SAN JOSE, CALIFORNIA
7   )
                   VS.   )   DECEMBER 1, 2016
8   )
         ARISTA NETWORKS, INC.,   )   VOLUME 6
9   )
                        DEFENDANT   )   PAGES 1115-1309
10   _____)

11   TRANSCRIPT OF PROCEEDINGS
                  BEFORE THE HONORABLE BETH LABSON FREEMAN
12   UNITED STATES DISTRICT JUDGE

13   A P P E A R A N C E S:

14   FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                                 BY: DAVID A. NELSON
15   500 WEST MADISON STREET, SUITE 2450
                                 CHICAGO, IL 60661
16

17   FOR THE PLAINTIFF:
                                 BY: SEAN PAK
18   50 CALIFORNIA STREET, 22ND FLOOR
                                 SAN FRANCISCO, CALIFORNIA 94111
19

20

21

22   APPEARANCES CONTINUED ON NEXT PAGE

23   OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
                                      CERTIFICATE NUMBER 13185
24

25   PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
                  TRANSCRIPT PRODUCED WITH COMPUTER

03:16:22 1   PRONOUNCE THE LETTERS, IT'S NOT A REAL WORD.

03:16:25 2   BUT IT'S VERY COMMON FOR ENGINEERS TO TALK ABOUT ACL'S.

03:16:31 3   AFTER A WHILE, THEY USE ENOUGH OF THESE, IT STARTS TO SOUND

03:16:35 4   LIKE A FOREIGN LANGUAGE, BUT IT DOES MAKE SENSE TO THE

03:16:37 5   ENGINEERS WHO SEE THESE COMMANDS.

03:16:39 6   Q.   AND ACL, WHAT DOES THAT STAND FOR?

03:16:42 7   A.   ACCESS CONTROL LISTS, ACL.

03:16:44 8   Q.   NOW IF WE MOVE FORWARD, IN TERMS OF YOUR ANALYSIS, DID YOU

03:16:51 9   DECIDE WHETHER THE ARRANGEMENT PLAYS INTO THE CREATIVITY PART?

03:16:54 10 A.   I DO. OR I DID. AND IT DOES PLAY A ROLE.

03:17:03 11   IN FACT, IF YOU REMEMBER TO JUST TWO MINUTES AGO WHERE I

03:17:07 12 TALKED ABOUT THE PARSER-POLICE MANIFESTO THAT BOX NUMBER ONE

03:17:11 13 WAS ABOUT EXTENSIBLE. AND PART OF THAT HAS TO DO WITH THE WORD

03:17:15 14   ORDER THAT YOU CAN USE.

03:17:16 15   AND SO YOU CAN USE SOMETHING LIKE SHOW IP ACCESS LISTS,

03:17:22 16 AGAIN IS OUR EXAMPLE. AND REALLY YOU CAN ORGANIZE THOSE IN ANY

03:17:26 17 WAY.

03:17:27 18   AND ONE ENGINEER MIGHT SAY THE EMPHASIS HERE IS ON

03:17:30 19 DISPLAYING INFORMATION. ANOTHER ONE MIGHT SAY, WELL THE

03:17:33 20 EMPHASIS REALLY IS ON ACCESS LISTS, SOY I COULD CREATE A

03:17:38 21 HIERARCHY CALLED ACCESS LISTS, I COULD IDENTIFY WHAT THE

03:17:42 22 PROTOCOL IS NEXT, IP OR OTHER KINDS OF ACCESS LISTS, AND THEN A

03:17:46 23 VERB TO SHOW WHAT THE CONFIGURATION IS, CONFIG TO CONFIGURE

03:17:52 24 THEM.

03:17:53 25   SO THE WORD CHOICE AND THE ORDERING HERE IS SOMETHING

1   IN THE UNITED STATES DISTRICT COURT

2   FOR THE NORTHERN DISTRICT OF CALIFORNIA

3   SAN JOSE DIVISION

4

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     CISCO SYSTEMS, INC.,   )   CV-14-5344-BLF
6   )
                    PLAINTIFF,   )   SAN JOSE, CALIFORNIA
7   )
               VS.   )   DECEMBER 2, 2016
8   )
     ARISTA NETWORKS, INC.,   )   VOLUME 7
9   )
                    DEFENDANT   )   PAGES 1310-1588
10   _____)

11   TRANSCRIPT OF PROCEEDINGS
            BEFORE THE HONORABLE BETH LABSON FREEMAN
12   UNITED STATES DISTRICT JUDGE

13   A P P E A R A N C E S:

14   FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                             BY: DAVID A. NELSON
15   500 WEST MADISON STREET, SUITE 2450
                             CHICAGO, IL 60661
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17   FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
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18   50 CALIFORNIA STREET, 22ND FLOOR
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21

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                                  CERTIFICATE NUMBER 13185
24

25   PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
               TRANSCRIPT PRODUCED WITH COMPUTER

10:16:06 1   MIGHT BE THE CASE. I HAVEN'T LISTED ALL THE DIFFERENT CISCO

10:16:09 2   MANUALS WHERE THAT APPEARS.

10:16:11 3   Q.   NOW, YOU TESTIFIED YESTERDAY ABOUT HELP DESCRIPTIONS. THE

10:16:22 4   HELP DESCRIPTIONS ARE TEXT THAT APPEARS WHEN THE USER TYPES A

10:16:24 5   QUESTION MARK AFTER A WORD, I BELIEVE YOU SAID; IS THAT

10:16:28 6   CORRECT?

10:16:28 7   A.   YES. I THINK YOU CAN, AT THE PROMPT, EVEN JUST TYPE A

10:16:32 8   QUESTION MARK WITH NO WORD.

10:16:33 9   Q.   AND YOU CAN DO IT -- YOU CAN PUT THE QUESTION MARK AFTER

10:16:37 10   ANY WORD IN THE COMMAND; RIGHT?

10:16:39 11   A.   YES.

10:16:39 12   Q.   SO YOU WERE TESTIFYING YESTERDAY ABOUT HELP DESCRIPTIONS

10:16:44 13   IN IOS XR, VERSION 5.14; RIGHT?

10:16:49 14   A.   THAT WAS PART OF IT. I TESTIFIED ABOUT OTHER VERSIONS AS

10:16:53 15   WELL.

10:16:53 16   Q.   AND THERE ARE THOUSANDS AND THOUSANDS OF HELP DESCRIPTIONS

10:16:59 17   IN -- EVEN THE ONE VERSION THAT YOU DID TALK ABOUT?

10:17:02 18   A.   I BELIEVE THERE ARE MANY, AT LEAST A THOUSAND, PROBABLY

10:17:08 19   MULTIPLE THOUSAND. I DON'T HAVE AN EXACT COUNT.

10:17:10 20   Q.   WELL, DR. BLACK LOOKED AT IOS XR AND HE FOUND MORE THAN

10:17:18 21   50,000 HELP DESCRIPTIONS IN JUST THAT VERSION. DOES THAT SOUND

10:17:22 22   RIGHT TO YOU?

10:17:23 23   A.   IT DOESN'T. I WOULD HAVE TO GO BACK AND LOOK AT HIS

10:17:29 24   REPORT.

10:17:29 25   Q.   BUT YOU DON'T HAVE A TOTAL NUMBER; IS THAT RIGHT?

10:43:28   1   A.   YES.

10:43:28   2   Q.   CAN YOU JUST TELL ME WHAT THE RFC IS?

10:43:33   3   A.   RIGHT.   THE RFC IS A STANDARD THAT COMES OUT OF THE

10:43:38   4   ENGINEERING TASK FORCE.   IT STANDS FOR REQUEST FOR COMMENTS.

10:43:41   5   YOU WOULDN'T THINK A DOCUMENT CALLED REQUEST FOR COMMENTS IS A

10:43:44   6   STANDARD, BUT THAT GOES BACK INTO THE EARLY DAYS OF THE

10:43:52   7   TECHNOLOGY.

10:43:52   8   SO EVERYBODY UNDERSTANDS THOSE ARE STANDARDS.   THEY ARE

10:43:55   9   PUBLISHED.   THEY DEAL WITH PROTOCOLS.   THEY DESCRIBE THE

10:43:57 10   FORMATS OF THE BITS.   THEY ARE VERY DETAILED BECAUSE THESE

10:44:00 11   KINDS OF EXCHANGES GO BETWEEN COMPUTERS AND THERE CAN'T BE ANY

10:44:06 12   AMBIGUITY ABOUT WHAT THE COMMUNICATION IS AND WHAT THE DATA

10:44:10 13   MEANS.

10:44:11 14   Q.   SO DO THOSE STANDARDS DEFINE ANYTHING ABOUT THE USER

10:44:14 15   INTERFACE?

10:44:14 16   A.   NO.   THEY DEFINE WHAT THE PROTOCOLS ARE WITH THE DATA THAT

10:44:22 17   GETS SENT OVER THE NETWORK.   THEY DON'T SAY HOW THE USER

10:44:25 18   INTERFACE SHOULD WORK.   THEY DON'T SAY WHAT THE COMMANDS SHOULD

10:44:27 19   BE.   ALL OF THAT IS LEFT UP TO THE IMPLEMENTER.

10:44:30 20   Q.   IS THERE ANY ONE OF THESE STANDARDS BODIES THAT YOU TALKED

10:44:33 21   ABOUT FOR USER INTERFACES?

10:44:34 22   A.   NO, NO, NOT FOR THE COMMANDS OR THE OUTPUTS OR THE HELP

10:44:42 23   DESCRIPTIONS.   THERE'S NO STANDARDS BODY.   THERE'S SIMPLY NONE

10:44:45 24   THAT EXISTS THAT PRODUCES ANY KIND OF STANDARD THAT SAYS WHAT

10:44:48 25   THOSE COMMANDS SHOULD BE.

04:01:44 1   YOU ASKED TO ASSUME INFRINGEMENT BY ARISTA. CAN YOU EXPLAIN

04:01:47 2   THAT ASSUMPTION?

04:01:48 3   A.   OH, YES. SO FOR THE PURPOSES OF MY ANALYSIS, I AM

04:01:53 4   ASSUMING THAT THE COPYRIGHTS HAVE BEEN FOUND TO BE INFRINGED

04:01:59 5   AND THAT ALSO THAT THE PATENT HAS BEEN FOUND TO BE INFRINGED.

04:02:05 6   SO MY TESTIMONY IS RELEVANT ONLY IF THE JURY FINDS EITHER

04:02:11 7   AND THAT THE COPYRIGHTS HAVE BEEN INFRINGED, CISCO'S COPYRIGHTS

04:02:17 8   HAVE BEEN INFRINGED AND/OR THAT THE PATENT HAS BEEN INFRINGED.

04:02:21 9   Q.   THANK YOU, DOCTOR.

04:02:22 10   SO IF WE LOOK AT THE NEXT SLIDE IN TERMS OF MATERIALS

04:02:25 11   CONSIDERED, CAN YOU WALK US THROUGH THE TYPE OF EVIDENCE THAT

04:02:27 12   YOU CONSIDERED IN FORMING YOUR ECONOMIC OPINIONS IN THIS CASE?

04:02:31 13   A.   SURE. SO A LOT OF THE EVIDENCE WAS, OF COURSE, MATERIALS

04:02:34 14   PRODUCED IN THIS CASE. SO I LOOKED AT THE COMPLAINT. I

04:02:40 15   EXAMINED THE DOCUMENTS PRODUCED BY BOTH PARTIES IN THE CASE. I

04:02:45 16   REVIEWED A LOT OF DEPOSITION TESTIMONY, SO THOSE ARE

04:02:50 17   DEPOSITIONS THAT WERE TAKEN PRIOR TO THE START OF TRIAL.

04:02:53 18   I EVALUATED PUBLICLY AVAILABLE INFORMATION ABOUT THE

04:02:57 19   COMPANIES AND ABOUT THE INDUSTRY; I HAD A NUMBER OF

04:03:02 20   CONVERSATIONS WITH CISCO'S TECHNICAL EXPERTS, DRS. ALMEROTH AND

04:03:09 21   JEFFAY; I HAD A NUMBER OF CONVERSATIONS WITH CISCO EMPLOYEES;

04:03:12 22   AND ALSO THE TRIAL TESTIMONY FOR THIS WEEK.

04:03:17 23   LET ME MENTION THAT I WASN'T ABLE TO BE IN COURT EVERY

04:03:21 24   MINUTE, SO, FOR EXAMPLE, I WAS TEACHING EARLIER THIS WEEK ON

04:03:25 25   THE EAST COAST. BUT I REVIEWED ALL OF THE -- I READ ALL OF THE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CISCO SYSTEMS, INC.,	)	CV-14-5344-BLF
	)	
PLAINTIFF,	)	SAN JOSE, CALIFORNIA
	)	
VS.	)	DECEMBER 5, 2016
	)	
ARISTA NETWORKS, INC.,	)	VOLUME 8
	)	
DEFENDANT	)	PAGES 1589-1878
_____	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                       BY: DAVID A. NELSON
                       500 WEST MADISON STREET, SUITE 2450
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FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                       BY: SEAN PAK
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APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
                             CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

04:07:54   1   Q.   OKAY. WAS THE CISCO IOS CLI THAT YOU USED AT USC, WAS

04:08:00   2   THAT THE FIRST COMMAND-LINE INTERFACE THAT YOU USED?

04:08:02   3   A.   NO, I USED MANY OF THEM BEFORE THAT.

04:08:04   4   Q.   OKAY. WHAT OTHER CLI'S DID YOU USE BEFORE YOU USED THE

04:08:11   5   CISCO IOS CLI?

04:08:13   6   A.   I HAD USED TOPS 20, TOPS 10, CPM, RSTS, MANY OTHERS.

04:08:22   7   Q.   AND ARE ANY OF THOSE PRODUCTS THAT YOU JUST NAMED, ARE ANY

04:08:28   8   OF THOSE CISCO PRODUCTS?

04:08:30   9   A.   NO, NONE OF THEM ARE.

04:08:31   10   Q.   DO YOU KNOW WHO THE MANUFACTURER IS FOR THOSE CLI'S THAT

04:08:35   11   YOU HAD USED BEFORE YOU STARTED USING THE CISCO IOS CLI?

04:08:38   12   A.   YES. SEVERAL OF THOSE ARE, WERE THE PRODUCT OF DIGITAL

04:08:43   13   EQUIPMENT CORPORATION, CPM WAS A PRODUCT OF DIGITAL RESEARCH.

04:08:48   14   Q.   AND IS DIGITAL EQUIPMENT CORPORATION, ARE THEY ALSO CALLED

04:08:59   15   DEC?

04:08:59   16   A.   YES.

04:08:59   17   Q.   DID YOU EVER ANY OTHER EXPERIENCE WORKING WITH DEC CLI'S

04:09:03   18   BESIDES TOPS 20 AND TOPS 10?

04:09:05   19   A.   THERE WAS ANOTHER OPERATING SYSTEM KNOWN AS 10X WHICH RAN

04:09:10   20   ON DEC HARDWARE BUT WAS PRODUCED BY ANOTHER COMPANY.

04:09:13   21   Q.   OF ALL THOSE CLI'S THAT YOU JUST MENTIONED, WHICH OF THEM

04:09:19   22   EXISTED PRIOR TO 1985?

04:09:23   23   A.   I BELIEVE ALL OF THEM DID.

04:09:24   24   Q.   HAVE YOU EVER USED THE DEC VMS CLI?

04:09:31   25   A.   I HAVE.

04:09:32 1   Q.   OKAY.   AND DO YOU KNOW WHEN YOU FIRST STARTED USING THE

04:09:35 2   DEC VMS CLI?

04:09:37 3   A.   APPROXIMATELY 1981.

04:09:41 4   Q.   AND WAS THAT ALSO WHEN YOU WERE WORKING AT THE UNIVERSITY

04:09:44 5   OF SOUTHERN CALIFORNIA, MR. LI?

04:09:46 6   A.   NO, THAT WAS WHILE I WAS A STUDENT AT HARVEY MUDD, I HAD A

04:09:53 7   780 RUNNING VMS.

04:09:54 8   Q.   AND PRIOR TO JOINING CISCO IN 1991, ABOUT HOW MANY YEARS

04:09:59 9   EXPERIENCE DID YOU HAVE USING THE DEC VMS CLI?

04:10:03 10   A.   PROBABLY ABOUT EIGHT YEARS.

04:10:08 11   Q.   CAN YOU DESCRIBE TO THE JURY THE KINDS OF COMMANDS THAT

04:10:13 12   THE DEC VMS CLI SUPPORTED?

04:10:16 13   A.   THE DEC VMS CLI HAD MANY DIFFERENT CLI COMMANDS. PROBABLY

04:10:24 14   THE MOST COMMON ONE WAS THE "SHOW" COMMAND. THIS WAS USED FOR

04:10:28 15   DISPLAYING INFORMATION.

04:10:29 16   Q.   AND WERE THE VMS COMMANDS, WERE THEY SINGLE COMMANDS OR

04:10:39 17   MULTIWORD COMMANDS?

04:10:40 18   A.   THEY WERE MULTIWORD COMMANDS SUCH AS "SHOW VERSION."

04:10:43 19   Q.   BESIDES "SHOW VERSION" THAT YOU JUST MENTIONED, WERE THERE

04:10:46 20   ANY OTHER SHOW COMMANDS THAT YOU RECALL BEING SUPPORTED BY THE

04:10:51 21   VMS CLI?

04:10:51 22   A.   I'M SORRY, I DON'T RECALL.

04:10:53 23   Q.   WERE THERE MORE SHOW COMMANDS THAN JUST "SHOW VERSION?"

04:10:57 24   A.   THERE WERE MANY.

04:10:58 25   Q.   AND AGAIN, THE TIME PERIOD THAT WE ARE TALKING ABOUT HERE,

LI DIRECT EXAMINATION BY MR. WONG

04:11:00 1   WAS THIS 1981?

04:11:02 2   A.   1981, PROBABLY UP THROUGH ABOUT '87, '88.

04:11:06 3   Q.   WAS THERE A PARTICULAR SYNTAX THAT THE DEC VMS SHOW

04:11:14 4   COMMANDS FOLLOWED?

04:11:14 5   A.   YES.   IT WAS TYPICALLY VERB OBJECT, AND THEN OPTIONS AFTER

04:11:21 6   THAT.

04:11:21 7   Q.   AND SO BY VERB, OBJECT AND OPTIONS, THE VERB FOR THE SHOW

04:11:26 8   COMMANDS IS THE "SHOW" WORD, CORRECT?

04:11:28 9   A.   CORRECT.

04:11:28 10   Q.   AND OF THE MANY SHOW COMMANDS THAT WERE SUPPORTED IN THE

04:11:34 11   VMS CLI AS YOU JUST TESTIFIED, DID THEY ALL FOLLOW THAT

04:11:38 12   PARTICULAR SYNTAX?

04:11:39 13   A.   THEY TRIED TO.

04:11:40 14   Q.   DID MOST OF THEM FOLLOW THAT SYNTAX?

04:11:42 15   A.   MOST OF THEM.

04:11:43 16   Q.   AND I THINK YOU MENTIONED THAT YOU HAD USED THE TOPS 20

04:11:51 17   CLI; IS THAT RIGHT?

04:11:52 18   A.   YES.

04:11:52 19   Q.   AND WHEN DID YOU FIRST START USING THE TOPS 20 CLI?

04:11:56 20   A.   I FIRST STARTED USING THAT IN 1982 AS A GRAD STUDENT AT

04:12:03 21   ROCKHURST UNIVERSITY, AND I HAD AN ACCOUNT ON A TOPS 20 SYSTEM

04:12:07 22   THERE.

04:12:07 23   Q.   AND THAT'S A CLI MADE BY DEC, CORRECT?

04:12:11 24   A.   YES.

04:12:11 25   Q.   AND PRIOR TO JOINING CISCO, APPROXIMATELY HOW MANY YEARS

LI DIRECT EXAMINATION BY MR. WONG

04:13:30 1   Q.   WHAT WERE THOSE SIMILARITIES BETWEEN THE DEC TOPS 20 CLI

04:13:34 2   AND THE CISCO IOS CLI?

04:13:36 3   A.   MANY OF THE HELP FUNCTIONS WERE MODELLED DIRECTLY AFTER

04:13:40 4   WHAT WAS ON TOPS 20, IT LOOKED ALMOST IDENTICAL.

04:13:44 5   Q.   WHAT OTHER SIMILARITIES WERE THERE BETWEEN THE TOPS 20 CLI

04:13:47 6   AND THE CISCO IOS CLI?

04:13:50 7   A.   THE OVERALL COMMAND SYNTAX WAS VERY SIMILAR. AGAIN, USING

04:13:55 8   THE VERB OBJECT THEN OPTIONS FORMAT.

04:13:58 9   Q.   ANY OTHER SIMILARITIES THAT YOU CAN RECALL BETWEEN THE DEC

04:14:03 10   TOPS 20 CLI AND THE CISCO IOS CLI?

04:14:07 11   A.   THOSE ARE THE PRIMARY ONES.

04:14:10 12   Q.   OKAY. AND MR. LI, DO YOU KNOW WHY THOSE SIMILARITIES

04:14:13 13   EXISTED BETWEEN THE CISCO IOS CLI AND THE TOPS 20 CLI?

04:14:18 14   A.   MANY PEOPLE WORKING ON CISCO IOS WERE FANS OF THE TOPS 20

04:14:23 15   OPERATING SYSTEM. I BELIEVE LEN BOSACK, THE FOUNDER OF CISCO,

04:14:28 16   HAD ALREADY WORKED AT DEC AND WAS PART OF THE HARDWARE TEAM

04:14:32 17   DESIGNING THAT HARDWARE FOR DEC.

04:14:37 18   MR. VAN NEST: WOULD YOU ASK THAT AGAIN. I THINK

04:14:39 19   SOMEONE COUGHED.

04:14:41 20   MR. WONG: I'M SORRY.

04:14:42 21   Q.   COULD YOU EXPLAIN AGAIN TO THE JURY, MR. LI, WHY THERE

04:14:47 22   WERE SIMILARITIES BETWEEN THE CISCO IOS CLI AND THE TOPS 20 CLI

04:14:51 23   MADE BY DEC?

04:14:52 24   A.   THERE WERE MANY PEOPLE AT CISCO WHO WERE FANS OF THE TOPS

04:14:56 25   20 OPERATING SYSTEM. WE ACTUALLY HAD SEVERAL OF THEM THAT WE

LI CROSS-EXAMINATION BY MR. NELSON

04:31:57 1   SO DR. LI THEN, I WANT TO TALK ABOUT PROCKET A LITTLE BIT.

04:32:00 2   SO THAT WAS THE COMPANY THAT YOU MENTIONED EARLIER THAT

04:32:03 3   STARTED ABOUT 1999; RIGHT?

04:32:04 4   A.   UH-HUH, YES.

04:32:05 5   Q.   AND CISCO WAS AN INVESTOR IN THAT COMPANY YOU MENTIONED?

04:32:12 6   A.   YES.

04:32:12 7   Q.   SO THEY OWNED PART OF THAT COMPANY, CORRECT?

04:32:14 8   A.   YES.

04:32:16 9   Q.   AND HAD SOMEBODY SITTING ON THE BOARD, I THINK YOU

04:32:18 10   MENTIONED, RIGHT?

04:32:18 11   A.   A BOARD AND SERVER.

04:32:20 12   Q.   SO I THINK WHEN YOU WERE TALKING ABOUT THE PROCKET SWITCH,

04:32:23 13   THE PRODUCT THEY HAD THAT YOU SAID THAT YOU COPIED THE COMMANDS

04:32:29 14   THAT WERE RELEVANT TO THE FEATURE SET YOU HAD, ISN'T THAT

04:32:32 15   RIGHT?

04:32:32 16   A.   THAT'S CORRECT.

04:32:32 17   Q.   SO IN OTHER WORDS, YOU DIDN'T COPY COMMANDS THAT WEREN'T

04:32:35 18   RELEVANT TO FEATURES YOU DIDN'T HAVE IN THE PRODUCT; RIGHT?

04:32:38 19   A.   YES.

04:32:38 20   FOR EXAMPLE, SINCE WE DID NOT SUPPORT APPLE TALK, WE DID

04:32:43 21   NOT IMPLEMENT THE APPLE TALK COMMANDS OUT OF IOS.

04:32:46 22   Q.   RIGHT. IT WOULDN'T MAKE MUCH SENSE TO COPY COMMANDS THAT

04:32:49 23   DON'T HAVE ANYTHING TO DO WITH THE FEATURES IN YOUR PRODUCTS;

04:32:54 24   RIGHT?

04:32:54 25   A.   YES.

04:49:43	1	MR. PAK: NO OBJECTION, YOUR HONOR.
04:49:44	2	THE COURT: IT WILL BE ADMITTED.
04:49:45	3	(DEFENDANT'S EXHIBIT 5146 WAS ADMITTED INTO EVIDENCE.)
04:49:45	4	MR. VAN NEST: BUT YES, YOU CAN.
04:49:47	5	THE COURT: ALL RIGHT. LET'S LET THE JURY GO HOME.
04:49:50	6	ALL RIGHT. WE'VE REACHED THE END OF THE COURT DAY.
04:49:52	7	TOMORROW ON TUESDAY, REMEMBER YOU COME AT 10:00. I WILL
04:49:55	8	HAVE MY CRIMINAL CALENDAR FIRST, SO I WILL GET THAT TAKEN CARE
04:49:58	9	OF AND THEN I WILL SEE YOU AT 10:00 AND WE WILL HAVE A FULL DAY
04:50:03	10	AFTER THAT.
04:50:03	11	LEAVE ME YOUR NOTEBOOKS AND YOUR BINDERS AND YOUR BADGES.
04:50:08	12	HAVE A GOOD EVENING AND I WILL SEE YOU TOMORROW.
04:50:20	13	(JURY OUT AT 4:50 P.M.)
04:50:22	14	THE COURT: ALL RIGHT. PLEASE BE SEATED, EVERYONE.
04:50:43	15	MY ONLY ISSUE IS I ACTUALLY HAVE LOST TRACK OF WHAT WE
04:50:47	16	HAVE FOR TOMORROW MORNING. THERE'S ANOTHER DEPOSITION THAT WAS
04:50:51	17	GOING TO BE DELIVERED TO ME, IS THAT RIGHT?
04:50:54	18	MR. VAN NEST: YES. WELL, TWO THINGS.
04:50:57	19	YES, THE GOURLAY DEPOSITION SHOULD BE ON ITS WAY
04:51:02	20	EMINENTLY. I THOUGHT IT HAD BEEN DELIVERED ALREADY.
04:51:04	21	MR. FERRALL: THIS IS HOW EMINENT IT IS.
04:51:06	22	MR. VAN NEST: THERE IT IS.
04:51:07	23	THE COURT: THAT'S GOURLAY. OKAY.
04:51:09	24	MR. VAN NEST: THAT'S GOURLAY. AND I BELIEVE WE HAVE
04:51:15	25	SUBMITTED A NUMBER THAT ARE DUE TO BE PROVIDED NOW THAT HAVE

1874

04:51:25 1   BEEN DELIVERED.

04:51:26 2   SO THE OTHER --

04:51:28 3   THE COURT: THE OTHER DEPOSITIONS, I'M JUST TRYING

04:51:31 4   TO -- WHAT OTHER DEPOSITION? BECAUSE I JUST WANT A LIST OF THE

04:51:36 5   DEPOSITIONS. I THOUGHT I WAS CAUGHT UP THIS MORNING WHEN I DID

04:51:40 6   SATZ AND --

04:51:42 7   MR. VAN NEST: YOU ARE, YOU ARE.

04:51:43 8   THE COURT: OKAY. THAT'S EXCELLENT.

04:51:47 9   MR. VAN NEST: YOU ARE CAUGHT UP.

04:51:49 10   THE COURT: I JUST WANT TO KEEP UP WITH YOU.

04:51:51 11   MR. VAN NEST: YOU ARE CAUGHT UP.

04:51:53 12   THE OTHER ONES WE HAVE IN THIS PACKET OR TO BE HERE

04:51:56 13   SHORTLY ARE GOURLAY, WHICH SHOULD BE THERE, AND KASTEN WE

04:52:01 14   COVERED.

04:52:02 15   THE COURT: WE'VE DONE KASTEN.

04:52:04 16   MR. VAN NEST: PATILL. P-A-T-I-L. CATO, C-A-T-O.

04:52:15 17   VENKATRAMAN, THAT'S V-E-N-K-A-T-R-A-M-A-N, AND MALIK,

04:52:21 18   M-A-L-I-K.

04:52:24 19   AND THAT'S ALL THE DEPOS. AND YOU HAVE EITHER RIGHT NOW

04:52:28 20   OR WILL SHORTLY.

04:52:30 21   THE COURT: IT LOOKS LIKE THAT MAY BE ALL OF THEM.

04:52:33 22   THE CLERK: GOURLAY IS NOT IN HERE. THE OTHERS ARE.

04:52:36 23   MR. VAN NEST: SO THAT'S THE OTHERS, AND GOURLAY WILL

04:52:39 24   BE HERE, I ASSUME, EMINENTLY.

04:52:41 25   MR. SANTACANA: I'M CHECKING ON IT, YOUR HONOR.

UNITED STATES COURT REPORTERS

09:23:12

1   IN THE UNITED STATES DISTRICT COURT

2   FOR THE NORTHERN DISTRICT OF CALIFORNIA

3   SAN JOSE DIVISION

4

5

CISCO SYSTEMS, INC.,   )   CV-14-5344-BLF

6   )

                     PLAINTIFF,   )   SAN JOSE, CALIFORNIA

7   )

          VS.   )   DECEMBER 6, 2016

8   )

ARISTA NETWORKS, INC.,   )   VOLUME 9

9   )

                     DEFENDANT   )   PAGES 1879-2157

10   _____)

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14   FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                              BY: DAVID A. NELSON
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17   FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
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19

20

21

22   APPEARANCES CONTINUED ON NEXT PAGE

23   OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
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02:38:34 1   I KIND OF HAD THAT OPPORTUNITY IN WHAT I COULD DO,

02:38:44 2   LITERALLY NOBODY COULD SAY THAT, DON'T DO THAT, I COULD DO

02:38:45 3   WHATEVER I WANTED.

02:38:46 4   Q.   THAT WAS BECAUSE YOU WERE AT JUNIPER AND THEY WERE WORKING

02:38:49 5   ON THEIR FIRST CLI?

02:38:50 6   A.   IT WAS A SMALL COMPANY AND WE HAD TECHNICAL REVIEW AND

02:38:53 7   STUFF LIKE THAT, BUT IT WAS REALLY AN OPPORTUNITY TO REIMAGINE

02:38:57 8   THE INTERACTION BETWEEN USERS AND DEVICES.

02:39:00 9   Q.   AND WAS THAT AN EXCITING OPPORTUNITY FOR YOU?

02:39:02 10 A.   YES, IT WAS.

02:39:02 11 Q.   AND THE SECOND REASON, I THINK YOU MENTIONED WAS SOMETHING

02:39:06 12 ABOUT CUSTOMERS, CUSTOMER FEEDBACK.

02:39:09 13   AND CAN YOU EXPLAIN A LITTLE BIT FURTHER ABOUT SOME OF THE

02:39:13 14 CUSTOMER FEEDBACK THAT YOU HAD BEEN HEARING ABOUT CISCO CLI AND

02:39:16 15 HOW THAT INFLUENCED YOUR DECISION TO COME UP WITH A DIFFERENT

02:39:19 16 USER INTERFACE FOR JUNIPER?

02:39:21 17 A.   SURE.

02:39:23 18   IF YOU -- SO IOS, EVEN AT THAT POINT IN '97, WAS FAIRLY

02:39:29 19 OLD. AND THE WAY IT APPROACHED CONFIGURATION OF THE COMMANDS

02:39:33 20 AND THE USER INTERACTION WAS FAIRLY DATED.

02:39:38 21   WE WANTED TO DO SOMETHING MORE MODERN, SOMETHING MORE

02:39:43 22 HIERARCHICAL, SOMETHING THAT WOULD HELP USERS IN THE DAY-TO-DAY

02:39:49 23 OPERATIONS THAT THEY USED OUR DEVICES FOR.

02:39:51 24 Q.   NOW THE OTHER THIRD REASON THAT YOU MENTIONED IS IN

02:39:55 25 LOOKING AT CISCO'S IOS CLI, YOU WERE CONCERNED THAT YOU DIDN'T

02:41:43 1   A.   YES.

02:41:44 2   Q.   AND IN FACT, IN THE ROUTER MARKET, HOW WOULD YOU

02:41:48 3   CHARACTERIZE JUNIPER'S MARKET SHARE AS COMPARED TO CISCO'S?

02:41:51 4   A.   I BELIEVE WE ARE NUMBER TWO.

02:41:53 5   Q.   SO YOU WERE ABLE TO GAIN A NUMBER TWO MARKET SHARE IN THE

02:42:06 6   COMPETITIVE ROUTER MARKET COMPETING AGAINST CISCO BY USING A

02:42:10 7   USER INTERFACE THAT IS DIFFERENT THAN CISCO'S, IS THAT TRUE?

02:42:13 8   A.   YES, THAT IS TRUE.

02:42:15 9   Q.   AND I WOULD LIKE TO HAVE YOU TAKE A LOOK IN YOUR BINDER, I

02:42:21 10   BELIEVE THERE SHOULD BE A TRIAL EXHIBIT 4821.

02:42:31 11   I BELIEVE THIS HAS ALREADY BEEN ADMITTED INTO EVIDENCE?

02:42:34 12   MR. VAN NEST: IT HAS.

02:42:35 13   MR. PAK: SO I WOULD LIKE TO SHOW THAT ON THE SCREEN,

02:42:37 14   MR. FISHER.

02:42:39 15   Q.   MR. SHAFER, THESE ARE SOME OF THE COMMANDS THAT ARE AT

02:42:42 16   ISSUE IN THIS CASE THAT ARE CISCO COMMANDS.

02:42:44 17   CAN YOU -- I KNOW YOU HAVEN'T STUDIED THIS IN DETAIL, BUT

02:42:48 18   COULD YOU JUST FLIP THROUGH THIS COMMAND LIST AND LET THE JURY

02:42:51 19   KNOW WHETHER THIS LOOKS LIKE A LIST OF JUNIPER COMMANDS OR NOT.

02:42:59 20   DO THEY LOOK FAMILIAR YOU TO YOU AS JUNIPER COMMANDS?

02:43:02 21   A.   THESE ARE CERTAINLY NOT JUNIPER COMMANDS.

02:43:04 22   Q.   AND WHY DO YOU SAY THAT?

02:43:06 23   A.   THE STYLE BETWEEN IOS AND JUNOS IS VERY DIFFERENT IN TWO

02:43:12 24   PARTS.

02:43:12 25   ONE IS IOS REGARDS CONFIGURATION AS JUST A SERIES OF

02:43:18 1   COMMANDS. WHEREAS IN JUNOS, DATA IS MORE LIKE A DATABASE. YOU

02:43:23 2   EDIT IT, CHANGE IT, YOU COPY IT, YOU HAVE OPERATIONS YOU CAN

02:43:30 3   PERFORM ON DATA AS CONFIGURATION DATA. THEN THERE'S A SEPARATE

02:43:33 4   SET OF OPERATIONAL COMMANDS.

02:43:36 5   CISCO IOS MIXES THOSE TWO --

02:43:41 6   Q.   AND --

02:43:42 7   A.   -- IN WAYS THAT WE DO NOT.

02:43:43 8   Q.   YOU ALSO MENTIONED EARLIER THAT YOU BELIEVED THE JUNIPER

02:43:47 9   CLI IS MORE HIERARCHICAL THAN CISCO CLI.

02:43:50 10   COULD YOU EXPLAIN TO THE JURY WHAT YOU MEAN BY THAT?

02:43:52 11   A.   SO AN IOS COMMAND -- LET ME TRY IT THE OTHER WAY.

02:44:05 12   JUNOS COMMAND HAS A SERIES OF LAYERS AND YOU CAN EDIT INTO

02:44:10 13   THOSE LAYERS, LOOK AT THE PARTICULAR DATA UNDER A LAYER AND

02:44:13 14   SHOW IT.

02:44:13 15   IT'S SIMILAR TO FOLDERS AND DIRECTORIES ON A WINDOWS OR A

02:44:17 16   MAC. WHERE, IN IOS, EVERYTHING IS AT THE TOP LEVEL. JUNOS,

02:44:23 17   THERE IS THIS ORGANIZATION THAT ALLOWS YOU TO LOOK AT THE

02:44:26 18   CONFIGURATION FOR ANY PARTICULAR PROTOCOL SEPARATE FROM THE

02:44:29 19   REST OF THE BOX.

02:44:32 20   Q.   EVEN THOUGH YOU WERE USING SOME INDUSTRY COMMON WORDS AND

02:44:35 21   ACRONYMS, DID YOU FEEL COMPELLED TO USE CISCO'S SYNTAX AND

02:44:39 22   CISCO'S HIERARCHY WHEN COMING UP WITH JUNIPER'S CLI?

02:44:43 23   A.   WE ATTEMPTED TO USE THE COMMANDS AND TERMS THAT WERE MOST

02:44:49 24   APPROPRIATE FOR THE TASK AT HAND.

02:44:52 25   AT THE BOTTOM OF THE FIRST PAGE -- SO THERE IS SOME AMOUNT

03:30:48 1   CAN YOU DESCRIBE FOR THE JURY THE SORT OF MATERIALS THAT

03:30:54 2   YOU REVIEWED IN ORDER TO CONDUCT THIS ANALYSIS?

03:30:58 3   A.   THERE WAS A LOT.

03:30:59 4   SO WE HAD ALL OF THE DISCLOSED MATERIALS, LOTS OF USER

03:31:03 5   MANUALS, DEPOSITIONS OF WITNESSES, SOURCE CODE FROM ARISTA,

03:31:08 6   FROM CISCO, FROM STANFORD, SOURCE CODE I WROTE MYSELF. I DID

03:31:12 7   SOME ADDITIONAL RESEARCH, AND I CONSIDERED ALL OF THAT IN

03:31:15 8   FORMULATING MY OPINIONS.

03:31:17 9   Q.   DID YOU -- WERE YOU ABLE TO USE THE SWITCHES FROM EITHER

03:31:23 10   CISCO OR ARISTA IN YOUR ANALYSIS?

03:31:25 11   A.   YEAH, I HAVE ONE OF EACH IN MY LIVING ROOM RIGHT NOW.

03:31:28 12   Q.   OKAY. AND APPROXIMATELY HOW MANY HOURS, IN TOTAL, DID YOU

03:31:32 13   SPEND ON THE ANALYSIS TO REACH THE OPINIONS YOU ARE PREPARED TO

03:31:36 14   GIVE TODAY?

03:31:36 15   A.   LAST TIME I LOOKED, IT WAS OVER A THOUSAND HOURS.

03:31:43 16   Q.   SO LET'S TURN TO THE CLI COMMANDS THAT ARE ASSERTED IN THE

03:31:49 17   CASE.

03:31:51 18   AND THE JURY HAS HEARD A LOT ABOUT THESE, BUT IF YOU COULD

03:31:55 19   GO BACK TO SORT OF THE FIRST BASE, IF YOU WILL, ON IT. AND

03:32:01 20   TELL US WHAT DOES A CLI COMMAND DO?

03:32:04 21   A.   I MEAN, A CLI IS THE MOST BASIC FORM OF COMPUTER

03:32:08 22   INTERFACE. YOU TYPE IN A COMMAND, YOU HIT ENTER OR RETURN, AND

03:32:12 23   SOMETIMES IT JUST DOES IT AND DOESN'T SAYING ANY, IT JUST GIVES

03:32:15 24   YOU ANOTHER PROMPT.

03:32:16 25   SOME COMMANDS EMIT A RESPONSE, AN OUTPUT ON THE SCREEN,

03:32:20   1   AND IT SCROLLS UP AND YOU READ THAT OUTPUT.

03:32:23   2   Q.   HAVE YOU EVER USED AN ANALOGY TO REFER TO A CLI COMMAND?

03:32:28   3   A.   SURE.

03:32:29   4   SO I MEAN, WE COMMONLY REFER TO THESE THINGS AS KNOBS.

03:32:32   5   AND THE REASON IS BECAUSE IT'S ANALOGOUS TO AN OLD STYLE STEREO

03:32:36   6   WHERE YOU'VE GOT ON-OFF BUTTON AND VOLUME AND TUNER KNOBS AND

03:32:42   7   SO FORTH.

03:32:42   8   IN ESSENCE, WHEN YOU ARE USING THE CLI, YOU ARE PUSHING

03:32:45   9   BUTTONS AND TURNING KNOBS. PERHAPS SOME PEOPLE CALL THE MORE

03:32:50 10   OBSCURE FEATURES "NERD KNOBS."

03:32:53 11   Q.   AND I THINK YOU HAVE SOME PHOTOS PREPARED TO SHOW THE JURY

03:32:56 12   ABOUT HISTORICAL COMMANDS AND USE OF COMMAND LINE; IS THAT

03:33:01 13   RIGHT?

03:33:01 14   A.   RIGHT, YEAH.

03:33:02 15   Q.   OKAY. CAN YOU EXPLAIN WHAT IS SHOWN HERE, DR. BLACK?

03:33:10 16   A.   SURE, THIS IS A PDP10. THIS WAS MADE BY DIGITAL EQUIPMENT

03:33:17 17   CORPORATION. THIS IS LIKE A SMARTPHONE IN YOUR POCKETS, A

03:33:19 18   THOUSAND TIMES FASTER.

03:33:20 19   THIS IS THE KIND OF MACHINE THAT I TOOK THE BUS UP TO THE

03:33:23 20   LAWRENCE HALL OF SCIENCE AND USED. AND WHEN YOU USED THIS

03:33:26 21   MACHINE, YOU DIDN'T SIT IN FRONT OF IT, YOU SAT IN FRONT OF A

03:33:30 22   TELETYPE, WHICH IS ACTUALLY -- ON THE NEXT SLIDE -- WHICH IS

03:33:32 23   ACTUALLY A PRINTER AND A KEYBOARD.

03:33:34 24   AND YOU TYPE YOUR CLI COMMAND IN AND IT WOULD CHUG AWAY

03:33:37 25   AND EMIT THE OUTPUT ON PAPER AND SCROLL UP. AND THE COOL THING

BLACK DIRECT EXAM BY MR. FERRALL (RESUMED)

04:26:14 1   TELLING YOU A FACT ABOUT THE CORRESPONDING ELEMENT.

04:26:19 2   Q.   AND ONE MORE QUESTION ON THIS TOPIC. THERE'S BEEN SOME

04:26:25 3   DISCUSSION ABOUT THE WORKS AS A COMPILATION OF ELEMENTS.

04:26:32 4   HAVE YOU GIVEN ANY THOUGHT AS TO WHETHER THE COMPILATION

04:26:37 5   OF ELEMENTS AS OPPOSED TO INDIVIDUAL COMMANDS AND SO FORTH, IS

04:26:43 6   FUNCTIONAL OR FACTUAL IN NATURE?

04:26:47 7   A.   YEAH, I MEAN, I THINK THIS IS SORT OF A LEGAL ARGUMENT

04:26:50 8   THAT'S GOING ON TO SOME EXTENT, BUT FROM A TECHNICAL

04:26:54 9   STANDPOINT, I MEAN, WHEN YOU -- WHEN YOU ARE DESIGNING A

04:26:58 10   PRODUCT YOU DON'T GO, HEY, I HAVE THIS NIFTY CLI COMMAND, I

04:27:02 11   WONDER WHAT KIND OF FEATURE I CAN PUT IN THERE TO CORRESPOND.

04:27:05 12   IT'S THE OTHER WAY, RIGHT? YOU DECIDE WHAT FEATURES ARE

04:27:09 13   GOING INTO THE SWITCH THEN THAT DICTATES WHAT THE COMPUTATION

04:27:11 14   OF THE CLI COMMANDS IS.

04:27:17 15   Q.   ALL RIGHT. LET'S MOVE TO THE THIRD FACTOR WHICH IS THE

04:27:19 16   SUBSTANTIALITY OF THE USE.

04:27:22 17   DID YOU CONSIDER IN FAIR USE FACTOR ALSO?

04:27:25 18   A.   FOR MANY MONTHS, YES.

04:27:27 19   Q.   AND YOU UNDERSTAND THIS IS EXPOSE E SUPPOSED TO LOOK AT

04:27:36 20   THE WORK AS A WHOLE AS COMPARED TO THE PART OF THE WORK THAT

04:27:38 21   WAS USED OR IS ASSERTED AGAINST ARISTA; RIGHT?

04:27:41 22   A.   THAT'S MY UNDERSTANDING, YES.

04:27:43 23   Q.   OKAY. AND DID YOU HAVE ANY BASIS TO KNOW WHAT THE

04:27:49 24   BOUNDARIES WAS OF THE WORK AS A WHOLE?

04:27:52 25   A.   I MEAN, MY UNDERSTANDING IS THAT WHAT'S BEING ASSERTED IS

08:24:15

1   IN THE UNITED STATES DISTRICT COURT

2   FOR THE NORTHERN DISTRICT OF CALIFORNIA

3   SAN JOSE DIVISION

4

5

         CISCO SYSTEMS, INC.,   )   CV-14-5344-BLF
6   )
                          PLAINTIFF,   )   SAN JOSE, CALIFORNIA
7   )
                    VS.   )   DECEMBER 7, 2016
8   )
         ARISTA NETWORKS, INC.,   )   VOLUME 10
9   )
                          DEFENDANT   )   PAGES 2158-2405
10   _____)

11   TRANSCRIPT OF PROCEEDINGS
                   BEFORE THE HONORABLE BETH LABSON FREEMAN
12   UNITED STATES DISTRICT JUDGE

13   A P P E A R A N C E S:

14   FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                                   BY: DAVID A. NELSON
15   500 WEST MADISON STREET, SUITE 2450
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17   FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
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20

21

22   APPEARANCES CONTINUED ON NEXT PAGE

23   OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
                                        CERTIFICATE NUMBER 13185
24

25   PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
                    TRANSCRIPT PRODUCED WITH COMPUTER

09:55:21   1   IN CERTAIN CASES, I THINK THE DOCUMENT IS TALKING ABOUT

09:55:24   2   THAT AS ONE OF THE THINGS YOU HAVE TO DECIDE IF YOU GOING TO

09:55:28   3   TERMINATE OR LEAVE IT EXTENSIBLE.

09:55:30   4   Q.   RIGHT. EXACTLY. ONE OF THE THINGS YOU HAVE TO DECIDE

09:55:37   5   WHERE, YOU, IS BEING AN ENGINEER CREATING THE COMMAND; RIGHT?

09:55:41   6   A.   THE PROGRAMMER CREATING THE COMMAND HAS TWO CHOICES, YES.

09:55:45   7   Q.   YEAH, EXACTLY.

09:55:47   8   OKAY. SO NOW I WOULD LIKE TO GO TO YOUR SLIDE 14.

09:55:57   9   A.   IN MY DEMONSTRATIVES?

09:55:58   10   Q.   YEAH. SO HERE YOU WERE TALKING ABOUT THE MODES AND

09:56:09   11   PROMPTS IN PRIOR SYSTEMS; RIGHT?

09:56:10   12   A.   YES.

09:56:10   13   Q.   AND YOU SET OUT TWO MODES, PRIVILEGE MODE AND NONPRIVILEGE

09:56:16   14   MODE; RIGHT?

09:56:17   15   A.   YES.

09:56:17   16   Q.   SO IN ALL OF THE THINGS YOU LOOKED THROUGH, YOU NEVER

09:56:19   17   FOUND A GLOBAL CONFIGURATION MODE, CORRECT?

09:56:21   18   A.   NOT PRIOR TO CISCO.

09:56:23   19   Q.   RIGHT. AND IN ALL THE THINGS YOU LOOKED FOR, YOU NEVER

09:56:26   20   FOUND AN INTERFACE CONFIGURATION MODE, CORRECT?

09:56:28   21   A.   THAT'S CORRECT.

09:56:29   22   Q.   AS WELL AS THE CORRESPONDING PROMPTS TO THOSE, CORRECT?

09:56:33   23   A.   IF YOU CAN CLARIFY PROMPT. THE HASH SIGN IS STILL USED IN

09:56:40   24   THE MODES YOU NAMED.

09:56:40   25   Q.   CORRECT. BUT THE PROMPTS FOR THOSE MODE INCLUDE THE

09:56:45 1   CONFIGURATION LETTERS, CORRECT?

09:56:47 2   A.   THEY INCLUDE THE HOST NAME OF THE DEVICE, WHICH IS

09:56:52 3   CONFIGUREABLE BY THE USER, THEN IN PARENTHESES, THAT CONFIG AND

09:56:57 4   CONFIG-IF.

09:56:57 5   Q.   RIGHT. YOU DIDN'T FIND THAT PROMPT IN ANY OF THE MANY

09:57:01 6   DOCUMENTS THAT YOU LOOKED THROUGH FOR SYSTEMS THAT CAME BEFORE,

09:57:04 7   CORRECT?

09:57:04 8   A.   THE HOST NAME WOULD BE THERE IN THOSE DOCUMENTS, BUT THAT

09:57:07 9   PARENTHETICAL, I DIDN'T FIND.

09:57:08 10   Q.   RIGHT.

09:57:10 11   AND YOU UNDERSTAND, SIR, THAT WHAT'S BEING ASSERTED IN THE

09:57:13 12   CASE IS THAT PARTICULAR ARRANGEMENT OF THOSE FOUR MODES AND

09:57:16 13   PROMPTS; RIGHT?

09:57:16 14   A.   I ACTUALLY HAVE BEEN UNCLEAR WHAT EXACTLY CISCO IS

09:57:20 15   CLAIMING PROTECTION FOR THEIR -- I UNDERSTAND IT'S NOT THE

09:57:25 16   ACTUAL WORD INSIDE THE PARENTHESIS, MY UNDERSTANDING NOW IS

09:57:32 17   IT'S THE ORDER OF THE WORDS; IS THAT CORRECT?

09:57:35 18   Q.   IT'S THE ARRANGEMENT OF THE MODES AND PROMPTS, CORRECT?

09:57:38 19   SO YOU UNDERSTAND THAT?

09:57:39 20   A.   I THINK SO.

09:57:40 21   Q.   SO TWO OF THE MODES YOU DIDN'T FIND AT ALL; RIGHT?

09:57:43 22   A.   I DIDN'T FIND THOSE TWO MODES YOU NAMED, YES.

09:57:45 23   Q.   RIGHT. SO THEN IT GOES WITHOUT SAYING THAT THAT

09:57:48 24   PARTICULAR ARRANGEMENT OF THE FOUR MODES AND PROMPTS, YOU

09:57:51 25   DIDN'T FIND AT ALL?

09:57:52   1   A.   I DIDN'T FIND THAT ORDERING BECAUSE I DIDN'T FIND THE

09:57:55   2   MODES.

09:57:56   3   Q.   RIGHT.

09:57:56   4   SO NOW I WANT TO TALK ABOUT A FEW OTHER THINGS.

09:58:09   5   SO ONE OF THE THINGS YOU HAD SAID IS YOU DIDN'T THINK THAT

09:58:16   6   THERE WAS A SUBSTANTIAL AMOUNT OF THE WORK THAT WAS TAKEN,

09:58:24   7   CORRECT?

09:58:24   8   A.   I'M UNCLEAR ON WHAT YOU ARE ASKING.

09:58:28   9   Q.   OKAY. SO ONE OF YOUR FAIR USE FACTORS, YOU TALKED ABOUT

09:58:31 10   THE AMOUNT OF THE WORK. YOU PUT UP A SLIDE AND SAID THERE'S

09:58:37 11   441 COMMANDS THAT ARE ACCUSED FROM IOS AND THERE'S 16,000

09:58:41 12   COMMANDS IN ALL OF IOS; RIGHT?

09:58:43 13   A.   I RECALL THAT, YES.

09:58:44 14   Q.   YOU DIDN'T ADDRESS THE QUALITY OF THAT THOUGH; RIGHT?

09:58:55 15   A.   IN WHAT SENSE DO YOU MEAN THE "QUALITY" OF THAT?

09:58:59 16   Q.   THE QUALITY OF WHAT WAS TAKEN; RIGHT?

09:59:03 17   A.   NOT IN THE WAY I'M UNDERSTANDING YOUR QUESTION.

09:59:08 18   Q.   RIGHT. YOU SIMPLY JUST LOOKED AT THE NUMBERS, YOU

09:59:11 19   COMPARED ONE NUMBER TO ANOTHER, CORRECT?

09:59:14 20   A.   I TOOK CISCO'S NUMBER DIVIDED BY CISCO'S NUMBER.

09:59:17 21   Q.   THAT'S IT?

09:59:18 22   A.   THAT'S IT.

09:59:19 23   Q.   OKAY. SO SIR, YOU WERE HERE FOR MR. DR. LI -- EXCUSE ME,

09:59:25 24   DR. LI'S TESTIMONY, CORRECT?

09:59:26 25   A.   I WAS.

09:59:26   1   Q.   AND HE WAS TALKING ABOUT PROCKET?

09:59:28   2   A.   HE WAS.

09:59:29   3   Q.   AND YOU RECALL WHEN HE SAID IT DOESN'T MAKE ANY SENSE TO

09:59:33   4   TAKE COMMANDS FOR FEATURES THAT AREN'T IN YOUR PRODUCTS?

09:59:38   5   A.   I THINK HE MIGHT HAVE SAID THAT.

09:59:39   6   Q.   RIGHT. AND YOU DON'T DISAGREE WITH THAT; RIGHT?

09:59:44   7   A.   I DON'T GIVE AN OPINION ONE WAY OR THE OTHER IN MY REPORT,

09:59:49   8   SIR.

09:59:49   9   Q.   I'M NOT ASKING YOU WHETHER YOU GAVE AN OPINION IN YOUR

09:59:52   10   REPORT, I'M JUST ASKING WHETHER YOU AGREE WITH THAT. IT MAKES

09:59:55   11   SENSE; RIGHT?

09:59:56   12   A.   I MEAN, SO ARISTA IS EXTENSIBLE, ARISTA COULD TAKE AND

10:00:00   13   IMPLEMENT COMMANDS TO CREATE NEW FEATURES IF -- IF THERE'S NOT

10:00:06   14   A HARDWARE FEATURE IN THE DEVICE, I DON'T THINK YOU WANT TO

10:00:10   15   TAKE COMMANDS THAT DESCRIBE A FEATURE THAT'S NOT PRESENT.

10:00:12   16   Q.   YEAH, THAT'S WHAT I'M SAYING.

10:00:14   17   AND YOU KNOW, WHAT YOU ARE SAYING IS THAT IF ARISTA ADDED

10:00:17   18   MORE FEATURES, THEY MAY WANT TO TAKE MORE COMMANDS; RIGHT?

10:00:21   19   A.   OR INVENT THEM ON THEIR OWN DEPENDING UPON THE OUTCOME OF

10:00:25   20   THE LAWSUIT.

10:00:25   21   Q.   RIGHT. WE KNOW THEY DIDN'T INVENT THEM ON THEIR OWN;

10:00:28   22   RIGHT, WE KNOW THEY TOOK THEM?

10:00:29   23   A.   IT SAID THE MAJORITY OF THE COMMANDS THEY ACTUALLY DID

10:00:33   24   CREATE ON THEIR OWN.

10:00:33   25   Q.   OKAY. THE 506 THAT ARE AT ISSUE IN THIS CASE, THEY TOOK

10:59:34 1   Q.   I WOULD LIKE TO CLARIFY A FEW THINGS, DR. BLACK. IF WE

10:59:40 2   COULD CALL UP EXHIBIT 9041 WHILE WE ARE ON THAT SUBJECT.

10:59:58 3   AND WHY DON'T WE SCROLL SEVERAL PAGES DOWN TO, SAY, AROUND

11:00:04 4   LINE 400 OR THEREABOUTS.

11:00:21 5   SO DR. BLACK, I GUESS THE THING I WOULD LIKE TO UNDERSTAND

11:00:24 6   IS, WE SEE HERE, FOR EXAMPLE, A NUMBER OF COMMANDS FOR WHICH

11:00:29 7   YOU FOUND USE IN THE 1 AND 2 VENDOR RANGE; RIGHT?

11:00:34 8   A.   YES.

11:00:34 9   Q.   OKAY. IF A COMPANY, FOR EXAMPLE AT LINE 409, THERE'S A

11:00:44 10   COMMAND VRRP AUTHENTICATION; DO YOU SEE THAT?

11:00:48 11   A.   I DO.

11:00:48 12   Q.   AND ARE YOU FAMILIAR WITH THE VRRP PROTOCOL?

11:00:56 13   A.   VIRTUAL ROUTER REDUNDANCY PROTOCOL.

11:01:01 14   Q.   ALL RIGHT. AND I SEE A NUMBER OF COMMANDS IN THAT

11:01:05 15   VICINITY, 410, 411; DO YOU SEE THAT?

11:01:06 16   A.   I DO.

11:01:07 17   Q.   WOULD YOU EXPECT THAT A NETWORKING VENDOR WHO DIDN'T

11:01:11 18   IMPLEMENT THE VRRP PROTOCOL TO HAVE A COMMAND IN THEIR MANUAL

11:01:15 19   FOR VRRP?

11:01:17 20   A.   NO, IT WOULDN'T MAKE SENSE IF THEY DON'T SUPPORT THE

11:01:20 21   PROTOCOL, THEY WOULDN'T HAVE THE COMMAND.

11:01:22 22   Q.   AND WOULD THAT GO FOR OTHER PROTOCOLS, PROTOCOL FEATURES

11:01:29 23   THAT ARE AMONG THE COMMANDS THAT CISCO CHOSE TO ASSERT HERE?

11:01:34 24   FOR EXAMPLE, IF A VENDOR DIDN'T IMPLEMENT THE PTP PROTOCOL,

11:01:40 25   WOULD YOU EXPECT THAT THEY WOULD HAVE PTP COMMANDS IN THEIR

11:01:43 1   MANUAL?

11:01:44 2   A.   I WOULDN'T EXPECT THEY WOULD.

11:01:45 3   Q.   AND DOES EVERY NETWORKING COMPANY IMPLEMENT EVERY INDUSTRY

11:01:52 4   STANDARD PROTOCOL THAT EXISTS?

11:01:55 5   A.   NO, THEY DON'T.

11:01:56 6   Q.   WHY IS THAT?

11:01:58 7   A.   I MEAN, IT'S THEIR CALL. I MEAN, IF SOMEBODY WANTS TO

11:02:02 8   OFFER SOME OF THE MORE HIGH END FEATURES, THEY CHOOSE TO IN

11:02:06 9   THEIR HIGH END PRODUCTS, USUALLY, MAYBE A LOWER END CHEAPER

11:02:12 10   INEXPENSIVE PRODUCT, THEY MIGHT NOT IMPLEMENT EVERYTHING.

11:02:14 11   Q.   NOW YOU PROVIDED YOUR ANALYSIS OF THE USAGE OF COMMANDS BY

11:02:22 12   DIFFERENT VENDORS EARLIER IN THIS CASE, SOME SIX MONTHS AGO OR

11:02:26 13   SO; RIGHT?

11:02:27 14   A.   AROUND JUNE, YES.

11:02:28 15   Q.   AND YOU UNDERSTAND DR. ALMEROTH HAD A CHANCE TO RESPOND TO

11:02:30 16   THAT; RIGHT?

11:02:31 17   A.   YES.

11:02:33 18   Q.   AND DID HE EVER CONDUCT ANY SORT OF ANALYSIS THAT LOOKED

11:02:36 19   AT WHAT OTHER VENDORS IMPLEMENTED AND TRIED TO FIND OTHER

11:02:43 20   VENDORS THAT CAME UP WITH DIFFERENT COMMANDS FOR THE SAME

11:02:46 21   FEATURE; DID HE EVER PROVIDE THAT TO YOU?

11:02:48 22   A.   NOT THAT I'VE SEEN, NO.

11:02:57 23   Q.   OF THE COMPANIES YOU DID LOOK AT, I WANT TO ASK YOU SOME

11:03:00 24   QUESTIONS ABOUT THAT.

11:03:01 25   BROCADE, THAT WAS ONE OF THEM; RIGHT?

02:36:29 1   DIFFERENCES BETWEEN THE COMMANDS, YOU CAN USE THIS GUIDE AS A

02:36:32 2   WAY TO TRANSLATE FROM ONE CLI COMMAND SET TO ANOTHER, CORRECT?

02:36:36 3   A.   CORRECT.

02:36:37 4   Q.   AND THEN IT ALSO PROVIDES A DETAILED DESCRIPTION WHERE IT

02:36:41 5   SAYS, BENEATH THE SIDE-BY-SIDE COMPARISON, THIS GUIDE PROVIDES

02:36:45 6   A MORE IN-DEPTH COMPARISON DISPLAYING THE OUTPUT OF THE COMMAND

02:36:50 7   AND OPTIONS.

02:36:50 8   DO YOU SEE THAT AS WELL?

02:36:52 9   A.   YES.

02:36:53 10   Q.   NOW IF WE GO DOWN TO, SCROLL DOWN A LITTLE BIT. COMWARE

02:36:59 11   DIFFERENCES.

02:37:00 12   "IF YOU ARE FAMILIAR WITH EITHER THE HP PROVISION CLI OR

02:37:04 13   THE CISCO IOS CLI, YOU WILL NOTICE THAT COMWARE CLI'S IS

02:37:11 14   ORGANIZED SLIGHTLY DIFFERENTLY."

02:37:12 15   DO YOU SEE THAT?

02:37:13 16   A.   YES.

02:37:14 17   Q.   AND IT SAYS, "COMWARE WAS DESIGNED FOR INTERNET SERVICE

02:37:17 18   PROVIDERS, ISP'S?"

02:37:19 19   A.   YES.

02:37:20 20   Q.   AND MANY FEATURES AND FUNCTIONS, SUCH AS SECURITY AND

02:37:25 21   QUALITY OF SERVICE ARE MULTI-TIERED TO SUPPORT THE DIFFERENT

02:37:28 22   NEEDS OF MULTIPLE ENTITIES ACCESSING THE SAME SWITCH.

02:37:33 23   DO YOU SEE THAT?

02:37:33 24   A.   YES.

02:37:34 25   Q.   AND YOU HAVE NO REASON TO DISPUTE THOSE PUBLIC STATEMENTS

03:43:21 1   HARM, WHETHER THERE HAS BEEN OR WILL BE MARKET HARM TO CISCO'S

03:43:27 2   COPYRIGHTS, WHICH IS A FAIR USE ISSUE.

03:43:29 3   Q.   AND POINT 3 ON THIS SLIDE SAYS, "ASSUME INFRINGEMENT."

03:43:34 4   DID YOU FORM ANY OPINIONS ON WHETHER OR NOT THERE ACTUALLY

03:43:38 5   HAS BEEN ANY INFRINGEMENT.

03:43:44 6   A.   NO OPINIONS. I ASSUME THERE'S BEEN INFRINGEMENT FOR

03:43:47 7   PURPOSES OF MY ANALYSIS. THAT DOESN'T MEAN I'VE CONCLUDED THAT

03:43:52 8   THERE HAS BEEN INFRINGEMENT, IT JUST MEANS THAT IF THE JURY

03:43:56 9   DOESN'T FIND THERE'S BEEN INFRINGEMENT, THE ISSUE OF DAMAGES

03:44:00 10   BECOMES MOOT AND NOBODY CARES WHAT I HAVE TO SAY HERE.

03:44:05 11   SO IT IS AN ASSUMPTION, BUT IT'S NOT AN OPINION.

03:44:08 12   Q.   ARE YOU HERE AS AN INDEPENDENT EXPERT?

03:44:11 13   A.   I AM.

03:44:12 14   Q.   AND WHAT DOES THAT MEAN?

03:44:14 15   A.   GENERALLY, IT MEANS I HAVE TO TRY TO BE AS OBJECTIVE AS

03:44:20 16   POSSIBLE WHEN I'M LOOKING AT THE EVIDENCE.

03:44:25 17   I'VE BEEN HIRED BY ARISTA, JUST LIKE DR. CHEVALIER WAS

03:44:29 18   HIRED BY CISCO, BUT I'M NOT HERE TO ARGUE FOR ARISTA THE WAY A

03:44:33 19   LAWYER WOULD, I'M SUPPOSED TO TRY TO TAKE A 360 VIEW OF THE

03:44:37 20   BUSINESS RECORD AND TRY TO LOOK AT IT IN AS NEUTRAL A LIGHT AS

03:44:42 21   I CAN.

03:44:43 22   Q.   AND IF WE COULD GO TO THE NEXT SLIDE, PLEASE, JEFF.

03:44:47 23   LET ME ASK YOU HOW, GENERALLY, DID YOU GO ABOUT PERFORMING

03:44:54 24   THAT TASK?

03:44:55 25   A.   THIS IS A SLIDE THAT GENERALLY SHOWS WHAT WE LOOKED AT AND

08:25:16

1   IN THE UNITED STATES DISTRICT COURT

2   FOR THE NORTHERN DISTRICT OF CALIFORNIA

3   SAN JOSE DIVISION

4

5

CISCO SYSTEMS, INC.,   )   CV-14-5344-BLF
6   )
                    PLAINTIFF,   )   SAN JOSE, CALIFORNIA
7   )
              VS.   )   DECEMBER 12, 2016
8   )
ARISTA NETWORKS, INC.,   )   VOLUME 13
9   )
                    DEFENDANT   )   PAGES 2656-2822
10   _____)

11   TRANSCRIPT OF PROCEEDINGS
               BEFORE THE HONORABLE BETH LABSON FREEMAN
12   UNITED STATES DISTRICT JUDGE

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14   FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                               BY: DAVID A. NELSON
15   500 WEST MADISON STREET, SUITE 2450
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17   FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
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22   APPEARANCES CONTINUED ON NEXT PAGE

23   OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
                                  CERTIFICATE NUMBER 13185
24

25   PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
                  TRANSCRIPT PRODUCED WITH COMPUTER

09:23:09 1   FROM THE COPYRIGHT OFFICE. THE EVIDENCE IN THIS CASE INCLUDES

09:23:12 2   26 CERTIFICATES OF COPYRIGHT REGISTRATION FROM THE COPYRIGHT

09:23:15 3   OFFICE FOR CISCO'S COPYRIGHTED WORKS.

09:23:21 4   IF YOU FIND THAT A CERTIFICATE WAS MADE WITHIN FIVE YEARS

09:23:26 5   AFTER FIRST PUBLICATION OF THAT WORK, YOU MAY CONSIDER THAT

09:23:30 6   CERTIFICATE AS EVIDENCE OF THE FACTS STATED IN IT.

09:23:34 7   FROM THE CERTIFICATE, YOU MAY, BUT NEED NOT, CONCLUDE THAT

09:23:38 8   THE WORK IS ORIGINAL AND COPYRIGHTABLE AND THAT CISCO OWNS THE

09:23:43 9   COPYRIGHT IN THAT WORK.

09:23:47 10   AN ORIGINAL WORK MAY INCLUDE OR INCORPORATE ELEMENTS TAKEN

09:23:52 11   FROM PRIOR WORKS, FROM THE PUBLIC DOMAIN, AND/OR WORKS OWNED BY

09:23:58 12   OTHERS WITH THE OWNER'S PERMISSION. THE ORIGINAL PARTS OF

09:24:03 13   PLAINTIFF'S WORK ARE THE PARTS CREATED:

09:24:05 14   1. INDEPENDENTLY BY THE WORK'S AUTHOR. THAT IS, THE

09:24:09 15   AUTHOR DID NOT COPY IT FROM ANOTHER WORK.

09:24:12 16   2. BY USE OF AT LEAST SOME MINIMAL CREATIVITY.

09:24:17 17   IN COPYRIGHT LAW, THE ORIGINAL PART OF THE WORK NEED NOT

09:24:20 18   BE NEW OR NOVEL.

09:24:25 19   AN OWNER IS ENTITLED TO COPYRIGHT PROTECTION OF A

09:24:29 20   COMPILATION. A "COMPILATION" IS A WORK FORMED BY THE

09:24:33 21   COLLECTION AND ASSEMBLING OF PRE-EXISTING MATERIALS OR OF DATA

09:24:38 22   THAT ARE SELECTED, COORDINATED, OR ARRANGED IN SUCH A WAY THAT

09:24:43 23   THE RESULTING WORK AS A WHOLE CONSTITUTES AN ORIGINAL WORK OF

09:24:47 24   AUTHORSHIP.

09:24:48 25   THE OWNER OF A COMPILATION MAY ENFORCE THE RIGHT TO

09:24:53	1	EXCLUDE OTHERS IN AN ACTION FOR COPYRIGHT INFRINGEMENT.
09:24:59	2	THE CREATOR OF AN ORIGINAL WORK IS CALLED THE AUTHOR OF
09:25:05	3	THAT WORK. AN AUTHOR ORIGINATES OR MASTERMINDS THE ORIGINAL
09:25:09	4	WORK CONTROLLING THE WHOLE WORK'S CREATION AND CAUSING IT TO
09:25:12	5	COME INTO BEING.
09:25:13	6	A COPYRIGHT OWNER IS ENTITLED TO EXCLUDE OTHERS FROM
09:25:16	7	COPYING A WORK MADE FOR HIRE. A "WORK MADE FOR HIRE" IS ONE
09:25:19	8	THAT IS PREPARED BY AN EMPLOYEE AND IS WITHIN THE SCOPE OF
09:25:23	9	EMPLOYMENT.
09:25:31	10	A COPYRIGHT OWNER IS ENTITLED TO EXCLUDE OTHERS FROM
09:25:35	11	CREATING DERIVATIVE WORKS BASED ON THE OWNER'S COPYRIGHTED
09:25:39	12	WORK.
09:25:40	13	THE TERM DERIVATIVE WORK REFERS TO A WORK BASED ON ONE OR
09:25:43	14	MORE PRE-EXISTING WORKS, SUCH AS A TRANSLATION, MUSICAL
09:25:49	15	ARRANGEMENT, DRAMATIZATION, FICTIONALIZATION, MOTION PICTURE
09:25:53	16	VERSION, SOUND RECORDING, ART REPRODUCTION, ABRIDGEMENT,
09:25:57	17	CONDENSATION, OR ANY OTHER FORM IN WHICH A WORK MAY BE RECAST
09:26:02	18	OR ADAPTED.
09:26:04	19	ACCORDINGLY, THE OWNER OF A COPYRIGHTED WORK IS ENTITLED
09:26:08	20	TO EXCLUDE OTHERS FROM RECASTING OR ADAPTING THE COPYRIGHTED
09:26:12	21	WORK WITHOUT THE OWNER'S PERMISSION.
09:26:18	22	CISCO HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE
09:26:20	23	EVIDENCE THAT ARISTA COPIED ORIGINAL, PROTECTED ELEMENTS FROM
09:26:23	24	CISCO'S COPYRIGHTED WORKS.
09:26:26	25	THERE ARE TWO WAYS THAT CISCO CAN MEET ITS BURDEN:

09:28:28   1   BETWEEN THE ORIGINAL PROTECTED ELEMENTS OF CISCO'S COPYRIGHTED

09:28:31   2   WORKS AND THE CORRESPONDING ELEMENTS OF ARISTA'S WORKS THAT

09:28:36   3   CISCO CLAIMS ARISTA COPIED.

09:28:39   4   IN MAKING THIS COMPARISON, YOU MAY FIND ANY OF THE

09:28:43   5   FOLLOWING ELEMENTS OF CISCO'S WORKS PROTECTED AS A COMPILATION

09:28:51   6   IF YOU FIND THEY ARE ORIGINAL.

09:28:54   7   1.   THE SELECTION AND ARRANGEMENT OF CISCO'S MULTIWORD

09:28:57   8   COMMAND LINE EXPRESSIONS.

09:28:59   9   2.   THE SELECTION AND ARRANGEMENT OF CISCO'S MODES AND

09:29:02 10   PROMPTS.

09:29:02 11   3.   THE COLLECTION OF CISCO'S SCREEN RESPONSES AND

09:29:07 12   OUTPUTS.

09:29:07 13   4.   THE COLLECTION OF CISCO'S HELP DESCRIPTIONS.

09:29:11 14   5.   CISCO'S USER INTERFACES AS A WHOLE AS COMPILATIONS OF

09:29:17 15   ELEMENTS 1 THROUGH 4.

09:29:19 16   6.   EACH OF CISCO'S TECHNICAL MANUALS.

09:29:25 17   IN MAKING THIS COMPARISON, YOU SHOULD NOT CONSIDER THE

09:29:28 18   FOLLOWING ELEMENTS WHICH ARE NOT PROTECTABLE:

09:29:30 19   1.   INDIVIDUAL WORDS USED IN ANY OF THE ASSERTED ELEMENTS.

09:29:36 20   2.   ANY SINGLE MULTIWORD COMMAND.

09:29:38 21   3.   THE IDEA OR METHOD OF GROUPING OR CLUSTERING COMMANDS

09:29:42 22   UNDER COMMON INITIAL WORDS, SUCH AS SHOW OR IP.

09:29:54 23   4.   ANY COMMAND HIERARCHY.

09:29:56 24   5.   SPECIFIC MODES AND SPECIFIC PROMPTS.

09:29:59 25   6.   THE IDEA OF A SET PATH WAY THROUGH A SERIES OF MODES.

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09:30:03   1              7.  THE IDEA OF MAKING CERTAIN COMMANDS AVAILABLE ONLY IN

09:30:07   2      CERTAIN MODES.

09:30:12   3              8.  USE OF COMMAND SYNTAX SUCH AS VERB, OBJECT,

09:30:17   4      PARAMETERS.

09:30:17   5          THE CHOICE -- I'M SORRY.

09:30:20   6              9.  THE CHOICE OF USING A TEXT-BASED USER INTERFACE.

09:30:24   7              10.  THE IDEA OF USING MULTIWORD COMMAND EXPRESSIONS TO

09:30:28   8      MANAGE OR CONFIGURE A DEVICE.

09:30:31   9              11.  THE FUNCTION OF ANY ASSERTED FEATURE.

09:30:36  10              12.  THE USE OF "?" TO CALL UP HELP DESCRIPTIONS.

09:30:42  11              13.  INDIVIDUAL HELP DESCRIPTION PHRASES.

09:30:50  12              14.  COMMAND PREFIXES THAT THE USER INTERFACE AUTO

09:30:53  13      COMPLETES.

09:30:54  14              15.  TAB COMPLETIONS.

09:30:57  15          IF CISCO PROVES VIRTUAL IDENTITY BETWEEN THE RELEVANT

09:31:03  16      PROTECTED ELEMENTS, IT MUST ALSO PROVE THAT AN ORDINARY,

09:31:07  17      REASONABLE OBSERVER WOULD FIND THE TOTAL CONCEPT AND FEEL OF

09:31:11  18      ITS COPYRIGHTED WORKS AS A WHOLE TO BE VIRTUALLY IDENTICAL TO

09:31:15  19      ARISTA'S CHALLENGED WORKS AS A WHOLE.

09:31:19  20          IN MAKING THAT COMPARISON, YOU SHOULD NOT CONSIDER

09:31:22  21      ELEMENTS THAT ARE NOT ORIGINAL OR ARE NOT PROTECTABLE.

09:31:27  22          AS I PREVIOUSLY INSTRUCTED YOU, CISCO'S WORKS AS A WHOLE

09:31:31  23      ARE ITS FOUR USER INTERFACES ASSOCIATED WITH ITS FOUR OPERATING

09:31:37  24      SYSTEMS, AS WELL AS EACH OF CISCO'S ASSERTED TECHNICAL MANUALS.

09:31:44  25          ARISTA'S WORKS, AS A WHOLE, ARE THE USER INTERFACES FOR
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09:31:47 1   EACH OF THE ACCUSED ARISTA OPERATING SYSTEMS AS WELL AS EACH OF

09:31:52 2   ARISTA'S ACCUSED TECHNICAL MANUALS.

09:31:58 3   IF YOU CONCLUDE THAT CISCO HAS PROVEN, WHETHER BY DIRECT

09:32:03 4   OR INDIRECT EVIDENCE, THAT ARISTA COPIED ORIGINAL, PROTECTED

09:32:06 5   ELEMENTS OF CISCO'S WORKS, YOU MUST THEN DETERMINE WHETHER THAT

09:32:12 6   COPYING WAS GREATER THAN DE MINIMUS, THAT IS MORE THAN A

09:32:19 7   TRIVIAL AMOUNT OF CISCO'S WORKS AS A WHOLE.

09:32:22 8   IN MAKING THIS DETERMINATION, YOU SHOULD CONSIDER THE

09:32:25 9   QUALITATIVE AS WELL AS THE QUANTITATIVE SIGNIFICANCE OF THE

09:32:29 10 COPIED PORTION IN RELATION TO CISCO'S WORKS AS A WHOLE.

09:32:37 11   NOW I WILL EXPLAIN WHAT "FAIR USE" MEANS UNDER THE LAW.

09:32:42 12   FOR ARISTA'S FAIR USE DEFENSE.

09:32:45 13   ONE WHO IS NOT THE OWNER OF A COPYRIGHT MAY USE A

09:32:49 14 COPYRIGHTED WORK IN A REASONABLE WAY UNDER THE CIRCUMSTANCES

09:32:53 15 WITHOUT THE CONSENT OF THE COPYRIGHT OWNER IF IT WOULD ADVANCE

09:32:57 16 THE PUBLIC INTEREST. SUCH USE OF A COPYRIGHTED WORK IS CALLED

09:33:06 17 A FAIR USE.

09:33:07 18   THE OWNER OF A COPYRIGHT CANNOT PREVENT OTHERS FROM MAKING

09:33:11 19 A FAIR USE OF THE OWNER'S COPYRIGHTED WORKS.

09:33:14 20   IN DETERMINING WHETHER THE USE MADE OF THE WORK WAS FAIR,

09:33:18 21 YOU SHOULD CONSIDER THE FOLLOWING FACTORS.

09:33:21 22   1. THE PURPOSE AND CHARACTER OF THE USE.

09:33:25 23   2. THE NATURE OF THE COPYRIGHTED WORK.

09:33:28 24   3. THE AMOUNT AND SUBSTANTIALITY OF THE PORTION USED IN

09:33:34 25 RELATION TO THE COPYRIGHTED WORK AS A WHOLE.

09:41:00 1   AFFIRMATIVE DEFENSE OF MERGER.

09:41:02 2   TO SHOW THAT CISCO'S COPYRIGHTED WORKS ARE SUBJECT TO

09:41:06 3   MERGER, ARISTA MUST SHOW THAT AT THE TIME CISCO CREATED THE

09:41:11 4   WORKS, CISCO HAD ONLY ONE WAY OR VERY FEW WAYS TO EXPRESS THE

09:41:17 5   IDEAS UNDERLYING THE ELEMENTS OF CISCO'S COPYRIGHTED USER

09:41:21 6   INTERFACES OR TECHNICAL MANUALS. MATERIAL IN AN ORIGINAL WORK,

09:41:27 7   EVEN MATERIAL THAT SERVES A FUNCTION, IS NOT SUBJECT TO MERGER

09:41:33 8   AS LONG AS THE AUTHOR HAD MORE THAN A FEW WAYS TO EXPRESS THE

09:41:37 9   UNDERLYING IDEA.

09:41:38 10   ARISTA HAS THE BURDEN OF PROVING THIS DEFENSE BY A

09:41:41 11   PREPONDERANCE OF THE EVIDENCE.

09:41:48 12   AFFIRMATIVE DEFENSE OF SCÈNES À FAIRE.

09:41:50 13   SCÈNES À FAIRE IS AN AFFIRMATIVE DEFENSE TO COPYRIGHT

09:41:54 14   INFRINGEMENT.

09:41:56 15   TO SHOW THAT PORTIONS OF CISCO'S USER INTERFACES ARE

09:42:00 16   SCÈNES À FAIRE MATERIAL, ARISTA MUST SHOW THAT AT THE TIME

09:42:03 17   CISCO CREATED THE USER INTERFACES, NOT AT THE TIME OF ANY

09:42:07 18   COPYING, EXTERNAL FACTORS OTHER THAN CISCO'S CREATIVITY

09:42:13 19   DICTATED THAT CISCO SELECT, ARRANGE, ORGANIZE AND DESIGN ITS

09:42:19 20   ORIGINAL FEATURES IN A MANNER IT DID.

09:42:21 21   THE SCÈNES À FAIRE DOCTRINE DEPENDS UPON THE CIRCUMSTANCES

09:42:25 22   PRESENTED TO THE CREATOR AT THE TIME OF CREATION, NOT THE

09:42:29 23   CIRCUMSTANCES PRESENTED TO THE COPIER AT THE TIME IT COPIED.

09:42:34 24   ARISTA HAS THE BURDEN OF PROVING THIS DEFENSE BY A

09:42:37 25   PREPONDERANCE OF THE EVIDENCE.

09:46:08 1   AS A RESULT OF ARISTA'S INFRINGEMENT. ACTUAL DAMAGES MEANS THE

09:46:13 2   AMOUNT OF MONEY ADEQUATE TO COMPENSATE THE COPYRIGHT OWNER FOR

09:46:17 3   THE REDUCTION IN THE FAIR MARKET VALUE OF THE COPYRIGHTED WORK

09:46:23 4   CAUSED BY THE INFRINGEMENT.

09:46:25 5   ACTUAL DAMAGES MAY BE MEASURED BY THE PROFITS OF THE

09:46:29 6   COPYRIGHT OWNER LOST DUE TO THE INFRINGEMENT REFERRED TO AS

09:46:34 7   LOST PROFITS.

09:46:35 8   IN THIS CASE, ACTUAL DAMAGES IN THE FORM OF LOST PROFITS

09:46:38 9   ARE THE AMOUNT THAT CISCO WOULD HAVE EARNED BUT FOR ARISTA'S

09:46:42 10   INFRINGEMENT.

09:46:47 11   IN ADDITION TO ACTUAL DAMAGES, CISCO IS ENTITLED TO ANY

09:46:51 12   PROFITS OF ARISTA'S ATTRIBUTABLE TO THE INFRINGEMENT. YOU MAY

09:46:58 13   NOT INCLUDE IN AN AWARD OF PROFITS, ANY AMOUNT THAT YOU TOOK

09:47:03 14   INTO ACCOUNT IN DETERMINING ACTUAL DAMAGES. YOU MAY MAKE AN

09:47:08 15   AWARD OF ARISTA'S PROFITS ONLY IF YOU FIND THAT CISCO SHOWED A

09:47:11 16   CAUSAL RELATIONSHIP BETWEEN THE PROFITS IT SEEKS AND THE

09:47:17 17   COPYRIGHT INFRINGEMENT.

09:47:19 18   IN THIS CASE, BECAUSE CISCO SEEKS ONLY DIRECT PROFITS,

09:47:24 19   CISCO MAY SATISFY ITS BURDEN BY SHOWING THAT THE PROFITS IT

09:47:28 20   SEEKS TO RECOVER DERIVED DIRECTLY FROM THE SALES OF THE

09:47:33 21   INFRINGING PRODUCTS.

09:47:35 22   ARISTA'S GROSS REVENUE IS ALL OF ARISTA'S REVENUE DIRECTLY

09:47:39 23   FROM THE SALE OF ANY PRODUCTS CONTAINING OR USING CISCO'S

09:47:44 24   COPYRIGHTED WORKS.

09:47:46 25   CISCO HAS THE BURDEN OF PROVING ARISTA'S GROSS REVENUE BY